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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

20 DELPHINE ALLEN, et al.)	Case No. 00-cv-04599 WHO
)	
21 Plaintiffs,)	JOINT CASE MANAGEMENT
)	STATEMENT
22 v.)	
)	Date: September 1, 2021
23 CITY OF OAKLAND, et al.,)	Time: 3:30 p.m.
)	Courtroom 2, 17th Floor
24 Defendant(s).)	Hon. William H. Orrick
)	
25)	
26)	

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PLAINTIFFS' STATEMENT

PLAINTIFFS' CURRENT POSITION

The Independent Monitor for the OPD has issued two status reports (the 73rd and 74th IMT Reports) since the last Case Management Conference statement was filed. OPD remains out of full compliance with five tasks that were out of compliance as of the last Case Management Conference Statement:

1. Task 2 (Timeliness Standards and Compliance with IAD Investigations – not in compliance when most recently assessed by the IMT in the 73rd Report);

2. Task 5 (Internal Affairs Division (IAD) Complaint Procedures – deferred when most recently assessed by the IMT in the 73rd Report);

3. Task 25 (Use of Force Investigations and Report Responsibility – in partial compliance when most recently assessed by the IMT in the 74th Report);

4. Task 34 (Stop Data – in partial compliance when most recently assessed by the IMT in the 69th IMT Report); and

5. Task 45 (Consistency of Discipline – in partial compliance when most recently assessed by the IMT in the 74th Report).

Two of these tasks (Tasks 2 and 25) were in full compliance as recently as January of 2019.

Three other Tasks that were not in full compliance during the last Case Management Conference are, as of the most recent (74th) IMT Report, once again in compliance:

1. Task 24 (Use of Force Reporting Policy)

2. Task 30 (Executive Force Review Boards)

3. Task 41 (Use of a Personnel Assessment System (PAS) and Risk Management)

Plaintiffs' will outline their concerns regarding specific NSA tasks, as well as developments that impact multiple NSA tasks, below:

I. TASK 2 (TIMELINESS STANDARDS AND COMPLIANCE WITH IAD INVESTIGATIONS)

Task 2 requires that the Internal Affairs Department (IAD) of the OPD complete internal investigations in a timely manner. This task was inactive between 2015 and 2019, before falling out of compliance once again. The Oakland Police Department has made concerted efforts to bring this task back into full compliance, and there has been objective progress on this task in the last year.

OPD policy requires that “at least 85% of Class I misconduct investigations and at least 85% of Class II misconduct investigations must be completed within 180 days to be considered timely.” Per DGO M-03, Class I offenses “are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.”

The IMT reviewed 54 Class I misconduct cases during the period covered by the 73rd IMT Report and determined that just 29 of these cases were completed in a timely manner. This represents a 54% timely-completion rate, which is a downgrade from the 67% completion rate the last time the IMT assessed this Task in the 71st IMT report. The IMT previously described a 69% timely completion rate as “still far below compliance” (69th IMT Report, page 3), and the most recent compliance rate is even worse. Plaintiffs’ attorneys note that OPD’s timely-completion rate stood at a paltry 38% as recently as recently as the 66th IMT Report, indicating substantial improvement in the intervening months. On the other hand, the most recent figures remain well short of the 85% compliance threshold required by the NSA.

Of the 99 Class II cases reviewed by the IMT during the period covered by the 73rd IMT Report, 81 were in compliance with established timelines. This represents an 82% compliance rate with IAD policy and is barely short of the 85% compliance threshold mandated by the NSA. This 82% compliance rate for Class II

1 investigations remains similar to the previous two reporting periods, when the IMT
2 determined OPD had completed 82% and 84% of Class II investigations in a timely
3 manner.

4 Plaintiffs' can report that OPD is working systematically to meet their
5 mandated timelines. OPD has informally communicated that the timely-completion
6 rate for Class I and Class II investigations that are being closed right now are both
7 at least at the 85% threshold required for compliance. Further, it appears that OPD
8 has built support around investigating these cases promptly. Chief Armstrong and
9 the Bureau of Risk Management Deputy Chief made changes to its IAD due dates
10 in which Commanders must now adhere to strict IAD due dates which are earlier
11 than the 180-day due dates, to ensure that investigations do not languish until the
12 last minute, and to allow IAD ample time to review and close out cases before the
13 180-day deadline.

14 It thus appears that the Department making progress toward once again
15 achieving compliance with Task 2. Task 2 compliance is categorically different from
16 the other Tasks that remain out of compliance insofar as the threshold for
17 compliance is strictly mathematical: there is an objective, concrete target that OPD
18 must meet, and there is objective progress in that direction. Unfortunately, the
19 OPD has not yet surpassed the 85% bar that is required and must be maintained.
20 OPD leadership, and IAD leadership appear to be narrowing this gap and moving
21 back toward full compliance. Given that OPD was previously in compliance with
22 this task for so long that it became inactive for four years, there is no reason OPD
23 cannot reattain that status shortly.

24 **II. TASK 5 (COMPLAINT PROCEDURES FOR IAD)**

25 OPD is not in full compliance with Task 5, which pertains to Complaint
26 Procedures for the Internal Affairs Division. On March 23, 2016, the Court issued
27 an Order indicating that irregularities and potential violations of the NSA occurred
28 in IAD investigation 15-0771. The Order noted that the investigation raised issues

1 of accountability and sustainability of compliance.

2 The IMT most recently assessed this task in the 73rd IMT Report. In this
 3 report, the IMT noted that “the Department has made progress in this Task and
 4 has shown capacity to better address internal investigations.” (73rd IMT report, p.
 5 9). The IMT nevertheless notes that “OPD is currently challenged by investigations
 6 emanating from demonstrations in May and June [2020] – to include a Level 1 use
 7 of force – as well as an officer-involved shooting outside City limits.” (73rd IMT
 8 report, p. 9).

9 Task 5 consists of several subtasks, and the IMT has determined that many
 10 of these are in compliance, including:

- 11 • Task 5.1, which requires that when a citizen wishes to file a complaint,
 12 the citizen is brought to a supervisor or IAD, or a supervisor is
 13 summoned to the scene.
- 14 • Task 5.2, which requires that if there is a delay of greater than three
 15 hours in supervisory response, the reason for the delay must be
 16 documented.
- 17 • Task 5.3, which requires that where a complainant refuses to travel to
 18 a supervisor, or wait for one, personnel make all reasonable attempts
 19 to obtain specific information to assist in investigating the complaint.
- 20 • Task 5.4, which requires that specific information be documented on a
 21 complaint form and submitted to the immediate supervisor or, in
 22 his/her absence, the appropriate Area Commander.
- 23 • Task 5.5, which requires that the supervisor or Area Commander
 24 notify Communications and forward any pertinent documents to IAD.

25 Every day, the Communications Division of OPD prepares Daily Incident
 26 Logs (DILs) that gather all the data required to evaluate compliance with these
 27 tasks. The IMT reports that this process has “significantly enhanced OPD’s ability
 28 to document compliance” (73rd IMT Report, p. 10) with these subtasks. Plaintiffs’

1 attorneys note that this streamlined, codified process is a marker of institutional
2 commitment to Task 5 compliance and commend OPD consistency in this regard.

3 The crux of Task 5 compliance, ultimately, pertains to subtasks relating to
4 the quality of IAD investigations (subtasks 5.15 to 5.19, and subtask 5.21).
5 Subtasks 5.15 and 5.16 require that OPD gathers all relevant evidence, conducts
6 appropriate follow-up interviews, considers all evidence, makes credibility
7 assessments where feasible, and resolves inconsistent statements. In all of the
8 cases the IMT reviewed during the period covered by the 73rd IMT report, the IMT
9 determined that OPD gathered all available relevant evidence and reported that
10 investigators did conduct follow-up interviews where necessary to resolve
11 inconsistencies. OPD also made credibility assessments in three cases reviewed by
12 the IMT, and the IMT agreed with all these credibility assessments. In two of these
13 cases, body-worn camera (BWC) footage was “instrumental” in determining
14 complainants and/or witnesses were not credible. This is a useful reminder that
15 BWC footage safeguards the public and OPD personnel alike and is critical to
16 sustaining public trust with the Department.

17 Despite these positive developments, Plaintiffs’ attorneys remain concerned
18 about the alarming number of reports of failure to activate body worm cameras in a
19 timely manner. These issues must be addressed and, if they continue, discipline
20 must be imposed (as it was in one case reported by the IMT in their 74th Report). If
21 such “mistakes” continue, it is only a matter of time before an officer does not use
22 his/her camera in a serious incident, resulting in a significant liability risk to the
23 City of Oakland.

24 Task 5.17 requires OPD to permanently retain all notes generated and/or
25 received by OPD in their personnel file, and OPD has a “sustained history of 100%
26 compliance with this subtask.” (73rd IMT Report, p. 8.). This was once again the case
27 during the most recent reporting period evaluated by the IMT.

28 Tasks 5.18 and 5.19 require, respectively, that OPD “resolve each allegation

1 in a complaint investigation using the preponderance of evidence standard” (5.18)
2 and necessitates “that each allegation of a complaint if identified’ be resolved with a
3 disposition of “unfounded”, “sustained”, “exonerated”, “not sustained”, or
4 administrative closure (5.19). The IMT did not disagree with any of the formal
5 findings in any of the cases they reviewed during this period. Over the last year, it
6 appears that the IMT has only disagreed with OPD findings in three cases.

7 Indeed, OPD reports that there has been no negative feedback from the IMT
8 regarding the quality of IAD investigations in almost one year. Put another way:
9 from a process standpoint, IAD investigations have been consistently up to the
10 standards mandated by the NSA, and acceptable to the Monitor. There were at
11 least two cases where the IMT appeared to disagree with the ultimate finding made
12 by the then-Chief but determined that the investigative process leading up to the
13 ultimate disposition was sufficient. Plaintiffs’ attorneys understand that, on
14 occasion, the IMT and the final arbiter(s) at OPD may come to different conclusions
15 about the disposition of an IA matter when looking at the same set of facts. OPD
16 can nevertheless be commended from a process standpoint. A consistent, robust
17 investigative framework is a fundamental pillar of Task 5 compliance, and OPD
18 deserves praise for consistency in this regard.

19 On January 14, 2021, this Court issued an Order regarding Internal Affairs
20 Case No. 21-0028 involving “serious matters that go to the heart of this case – the
21 culture of the Oakland Police Department and the efficacy of internal oversight
22 mechanisms within the Department, which were the primary reason for the
23 imposition of the NSA in the first place.” (Dkt. 1419, page 1). This was connected to
24 the revelation that current and former OPD employees, as well as other members of
25 Bay Area law enforcement organizations, were active participants on a racist, sexist
26 Instagram page with the online handle “@crimereductionteam” that was discussed
27 at length during the previous Case Management Conference.

28 Many of the “@crimereductionteam” posts mocked OPD policies regarding use

1 of force reporting and police brutality, while others were overtly racist and
 2 misogynistic. Several posts were incorporated into Plaintiffs' portion of the most
 3 recent CMC Statement (see Dkt. 1423, pp. 6-12.)

4 Plaintiffs' attorneys do not know exactly when this Instagram account was
 5 created. However, Plaintiffs' attorneys are in possession of a Department-wide
 6 email from September 23, 2020 that states OPD command staff "have come across a
 7 page on Instagram that some officers in our department 'follow'", with appended
 8 screenshots of "@crimereductionteam" posts.

9 Further, as Plaintiffs' attorneys reported to this Court at the last Case
 10 Management Conference, it appears that OPD did not initiate an Internal Affairs
 11 investigation regarding the "@crimereductionteam" account until the contents were
 12 publicly reported by journalist Darwin Bond-Graham and others, even though OPD
 13 was on notice that personnel were engaging these accounts since at least September
 14 2020, when the Department-wide email regarding the @crimereductionteam
 15 Instagram account was circulated.

16 The 3304 date for the investigation of this Instagram fiasco apparently falls
 17 just days after this Case Management Conference. This Court wrote that the
 18 investigation into these matters "may well demonstrate the defendants'
 19 commitment to accountability and the sustainability of the reforms in the NSA."
 20 (Dkt. 1419). Plaintiffs' attorneys are eager to see if OPD can do so. While it is
 21 undeniably true that these Instagram posts echo long-standing cultural problems,
 22 Plaintiffs' Attorneys also recognize that it provides an opportunity for OPD to
 23 demonstrate that it can self-govern, and hold itself to account, as required by the
 24 Negotiated Settlement Agreement.

25 **III. TASKS 24 (USE OF FORCE REPORTING POLICY) & 25 (USE OF** 26 **FORCE INVESTIGATIONS AND REPORT RESPONSIBILITY)**

27 OPD had been in compliance with Tasks 24 (Use of Force Reporting Policy)
 28 and 25 (Use of Force Investigations and Report Responsibility) of the NSA since

1 2015. In November 2018, this Court reactivated these Tasks as a result of Plaintiffs’
2 and the Monitoring Team’s concerns about systematic underreporting of weaponless
3 defense techniques and incidents related to the pointing of firearms. Subsequently,
4 the IMT found both Task 24 and Task 25 out of compliance. During the most recent
5 (74th) IMT Report, OPD came back into compliance with Task 24.

6 OPD was able to reattain compliance with Task 24 by working with
7 stakeholders, including Plaintiffs’ attorneys, the IMT, and the Police Commission,
8 to enact policy revisions related to such Use of Force reporting. Specifically, OPD
9 published Special Order 9196, which clarified use of force policies regarding the
10 pointing of a firearm. This Special Order supersedes relevant sections of
11 Departmental General Orders (DGOs) K-3 (Use of Force) and K-4 (Reporting and
12 Investigating Use of Force) by eliminating all references to “intention” related to an
13 officer pointing his or her service weapon. OPD acknowledged that determining
14 “intent”, as well as language regarding the “low-ready” position”, was
15 “unnecessarily subjective and did not capture the spirit of the policy: reporting
16 every time that an officer points a firearm at a person.” (Special Order 9196, p. 1).
17 Level 4, Type 22 Use of Force was thus redefined “Pointing a Firearm at a Person”,
18 where pointing means any incident, intentional or otherwise, where “the line of the
19 muzzle intersects with the body of the subject such that, if the firearm were to
20 discharge, the round would strike that person.”

21 This led to a predictable increase in the total uses of force during 2020. Per
22 the biweekly reports that the Department regular shares with the IMT and
23 Plaintiffs’ attorneys, there were 2,996 total uses of force in 2020, up from 1,555 in
24 2019. Level 4 uses of force, which include “Pointing of a Firearm at a Person” as
25 described above, were primary driver of this surge: while there were 1,429 total in
26 2019, that figure jumped by over 1,200 to 2,631 in 2020.

27 As Plaintiffs have previously noted, the more recent numbers are largely a
28 result of Special Order 9196, and more accurately reflect OPD’s actual use of force

1 than data from previous years. The 2020 figures also provide a comprehensive
2 baseline for subsequent comparison. According to the most recent (292nd) biweekly
3 Compliance Update issued by OPD, there have been 851 Level 4 Uses of Force to
4 date in 2021. This represents a dramatic year-to-year reduction: In 2020, to date,
5 there had been 1654 Level 4 uses of force. Given that there is no indication that
6 OPD is now undercounting certain kinds of force (especially Type 22, Pointing a
7 Firearm at a Person), the Department deserves praise for the significant reduction
8 in Level 4 Uses of Force.

9 Special Order 9196 also created several new Use of Force categories,
10 including Level 4, Type 32 to ensure that any force used by OPD to “overcome
11 resistance” was adequately documented. Such force includes moving subjects who
12 had gone limp, guiding and/or pushing subjects into patrol vehicles, using
13 restraining devices, removing people who are holding on to fixed objects, and
14 forcibly handcuffing subjects who are resisting arrest.

15 Here, too, OPD must be commended. Plaintiffs’ attorneys do not know of
16 another major-city police department that has taken steps to ensure that all the
17 above-described uses of force must always be documented and codified this into
18 their Use of Force policy. This reflects truly progressive policing, and it is a credit
19 to the Department that all such uses of force are now reported

20 The IMT reviewed 186 Level 3 and Level 4 use of force reports during the
21 reporting period covered by the draft 74th IMT report. There were 501 discrete uses
22 of force across these 186 incidents, including 102 where weapons were pointed at a
23 subject. In 93 of those 102 incidents (where a weapon was pointed at a subject),
24 Level 4, Type 22 Use of Force was the only force used, and the IMT determined that
25 this use of force was appropriate in all instances. Further, the IMT did not identify
26 any instances where officer did not report Type 22 Uses of Force. It thus appears
27 that the new policy regarding reporting the pointing of a firearm is working: Type
28 22 force is now captured in UOF collection, is reported consistently, and is within

1 policy when used, according to the IMT, who determined that every instance of Type
 2 22 Force they reviewed during the period covered by the 74th IMT report was
 3 appropriate. (Draft 74th IMT Report, p. 10)

4 The IMT did, however, “identify nine instances where officers who assisted in
 5 restraining a combative person did not report a Type 32 UOF, and one where a
 6 Type 29 UOF was not reported.” (Draft 74th IMT Report, p. 10). This is, as
 7 described above, a new Use of Force category that is among the most progressive in
 8 the nation, and it is therefore likely that there will be hiccups related to reporting
 9 this previously unreported use of force at the outset of the new policy. OPD must
 10 nevertheless ensure that all officers are trained in the new force type and attendant
 11 reporting requirements, and Plaintiffs’ attorneys will monitor subsequent IMT
 12 reports for progress reporting Type 32 Uses of Force.

13 The Department also reports that the IMT has not deemed any Uses of Force
 14 out of compliance in many months. This is of a pattern with the IA investigations
 15 described above: The IMT has not expressed substantive concerns with the
 16 underlying process, even on the rare occasions where they disagree with an
 17 outcome. The IMT has, however, provided some feedback to OPD about the
 18 announcement and identification of officers during initial detention, late Body Worn
 19 Camera (BWC) activations, and boilerplate language regarding training and
 20 experience. These are important issues that were highlighted by OPD’s own Office
 21 of the Inspector General (OIG) in a 2019 Report titled “Special Report: An
 22 Assessment of the Oakland Police Department’s Use of Force Reporting, Usage of
 23 Portable Digital Recording Devices, and Supervision of Incidents During Arrests for
 24 Offenses Where There is a Significant Chance That force Would Be Used.”¹ It is
 25 incumbent on OPD to immediately address these issues since they have been on
 26 notice about such problems for years.

27 Even so, Plaintiffs’ attorneys agree with the IMT that OPD’s policies now

28 ¹ <http://www2.oaklandnet.com/oakca1/groups/police/documents/report/oak072446.pdf>

1 meet the standard required by the NSA and are therefore in compliance with Task
2 24 of the NSA. Future revisions and modifications will inevitably be needed,
3 because policy standards are dynamic and commonly accepted best practices will
4 continue to evolve. Indeed, changes to DGO K-3 were modified because of changes
5 in the law, and in response to the wishes of the Police Commission following the
6 murder of George Floyd. This is a necessary component of a self-sustaining, self-
7 correcting, and progressive Police Department. Although OPD has not yet trained
8 all officers on the revisions to DGO K-3, Plaintiffs' attorneys understand that all
9 officers will be so trained within one month from when the revised document is
10 published. The Police Commission and OPOA (Oakland Police Officers Association)
11 are currently reviewing these changes, and Plaintiffs' attorneys are eager for this
12 process to be completed. OPD has already completed trainings for revisions to other
13 use of force policies.

14 Task 25 remains in partial compliance for the following reasons:

15 25.1 The IMT reports that while there has been a decline in the use of
16 boilerplate language, they continue to "find numerous instances where officers
17 justify their uses of force "based on my training and experience" without any further
18 information or explanation as to what training and experience they are referring
19 to."

20 25.2 The IMT finds that they continue to find concerns about the preparation
21 and review of UOF reports by OPD supervisors and "we continue to find instances
22 where OPD supervisors do not identify deficiencies in officer reporting and fail to
23 identify or address MOR violations".

24 The IMT concludes their report on Task 25 by stating: "we continue to see
25 reports where supervisors have failed to identify and address deficiencies by their
26 personnel and in some cases failed to complete appropriate documentation. While
27 we have continued to see improvements in those reports we reviewed for this period,
28 there is still work to be done."

1 If OPD wants to attain NSA compliance, they must make the improvements
 2 specified by the IMT for this task. OPD had been “in compliance” before Judge
 3 Orrick reactivated this Task in November 2018 and has made improvements in this
 4 Task in the IMT’s most recent reports. The shortcomings here seem largely
 5 supervisorial in nature. Perhaps Commanders should consider a directive to
 6 supervisors on this matter or those supervisors responsible for these shortcomings
 7 should obtain additional training. In any event, compliance appears to be in sight
 8 for this Task and OPD should carefully consider what it will take to attain
 9 compliance here.

10 **IV. TASK 30 (EXECUTIVE FORCE REVIEW BOARDS)**

11 Task 30 pertains to Executive Force Review Boards (EFRBs), which consist of
 12 three command-level officer who review all Level 1 uses of force, as well as in-
 13 custody and pursuit-related deaths and serious injuries. Although OPD had been in
 14 compliance with this Task for some time, the IMT deferred a compliance finding for
 15 Task 30 following the Joshua Pawlik shooting incident, until they (the IMT) could
 16 observe additional EFRBs. The Pawlik EFRB was discussed at great length in
 17 previous Case Management Conferences. In short, Plaintiffs’ attorneys are in
 18 complete agreement with the IMT’s assessment that the Pawlik EFRB was deeply
 19 flawed and disagreed with the EFRB findings in the Pawlik matter.

20 OPD has convened three one EFRBs since the Pawlik matter: one related to a
 21 canine deployment in 2019, another related to an officer-involved shooting in
 22 Richmond, CA, and a third pertaining to a baton strike which occurred during the
 23 protests related to the murder of George Floyd in 2020. Plaintiffs’ attorneys were
 24 not involved in any of these EFRBs and defer to the IMT’s assessment that they
 25 were “well-run, thorough, and complete” (Draft 74th IMT Report, p. 22), and that
 26 they agreed with the findings (including some sustained findings related to officer
 27 actions during the vehicle pursuit that culminated in the officer-involved shooting
 28 in Richmond, CA). The IMT determined that all three of these EFRBs were in

1 compliance, and therefore determined that OPD is once again in compliance with
2 Task 30 (Draft 74th IMT Report, p. 22). Plaintiffs' attorneys congratulate the
3 Department on this achievement and expect that OPD can and will remain in
4 compliance with this Task moving forward.

5 **VI. TASK 34 (STOP DATA/VEHICLE STOPS, FIELD INVESTIGATIONS**
6 **AND DETENTIONS)**

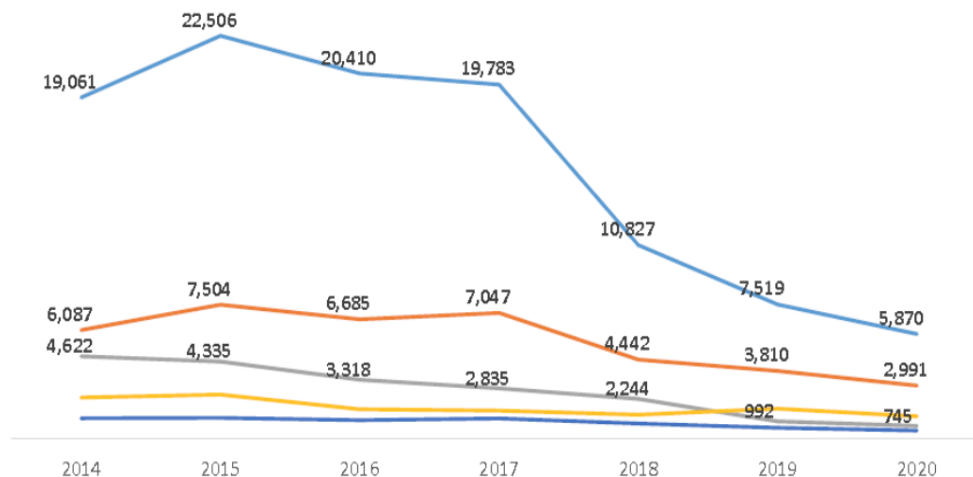
7 At the outset of the NSA, the Oakland Police Department did not have any
8 mechanism to review, approve, or assess the justifications for stops and searches by
9 its officers. Indeed, this lack of oversight and accountability led directly to the
10 abuses that precipitated Plaintiffs' attorneys' involvement in the NSA. Recent
11 progress on this front is remarkable, and a credit to the Department and all other
12 stakeholders diligently involved in this sphere.

13 OPD recently demonstrated a commitment to "intelligence-led" stops, which
14 greatly reduced the racial disparities in discretionary stops by Oakland Police
15 officers. As recently as 2015, there were 22,506 non-dispatch stops of African
16 Americans by Oakland police. That number has fallen year-over-year, to just 5,870
17 in 2020. The number of stops for all racial categories were reduced over this period,
18 but two figures are especially striking since 2015: A 74% reduction in the total
19 number of African American stops (from 22,506 to 5,780) and the 60% reduction in
20 the total number of Hispanic stops (from 7,504 to 2,991):

21 ///

Non-Dispatch Stops by Race 2014-2020

Race	2014	2015	2016	2017	2018*	2019	2020	2019-2020 # Change	2019-2020 % Change
Afr American	19,061	22,506	20,410	19,783	10,827	7,519	5,870	-1,649	-28%
Hispanic	6,087	7,504	6,685	7,047	4,442	3,810	2,991	-819	-27%
White	4,622	4,335	3,318	2,835	2,244	992	745	-247	-33%
Asian	2,320	2,484	1,667	1,588	1,366	1,701	1,279	-422	-33%
Other	1,168	1,190	1,061	1,152	871	627	476	-151	-32%
Total	33,258	38,019	33,141	32,405	19,750	14,649	11,361	-3,288	-29%

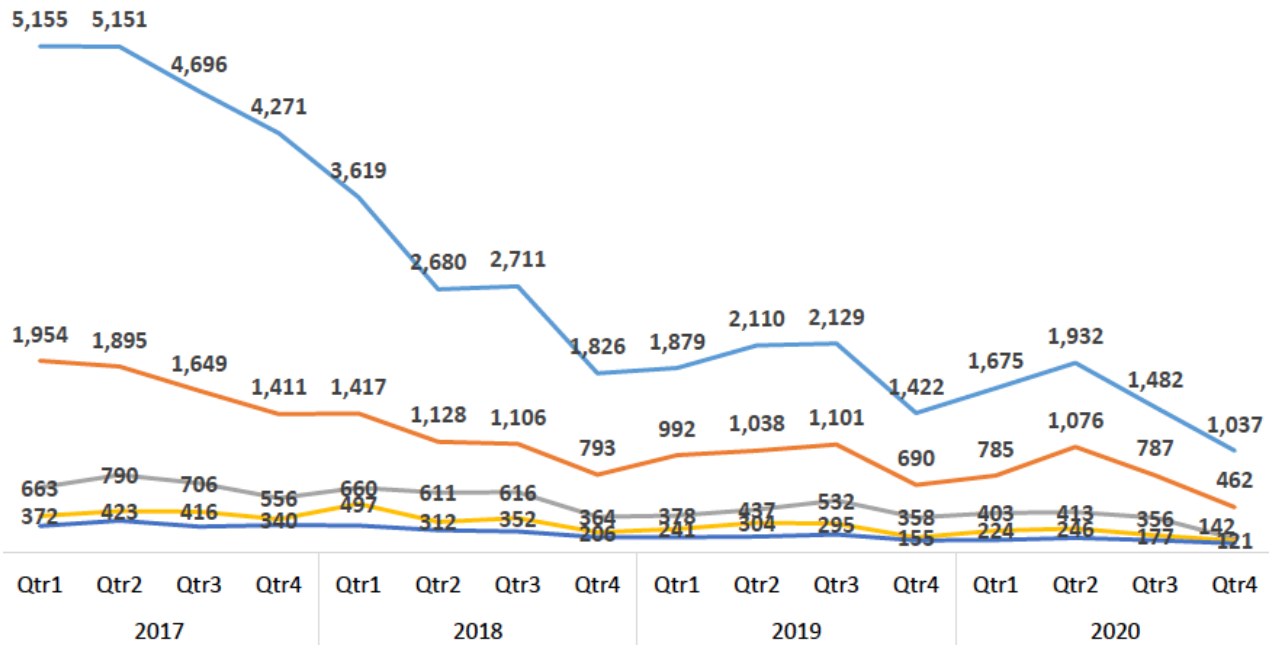


A more recent chart, recently shared by OPD personnel with Plaintiffs' attorneys, plots the number of non-dispatch stops in each quarter, and indicates that the positive momentum outlined above did not stall during the first year of the Covid-19 pandemic:

///

Non-Dispatch Stops by Race 2017-2020

	Afr American	Hispanic	White	Asian	Other	
Year	Afr American	Hispanic	White	Asian	Other	Total
2017	61% (19,273)	22% (6,909)	9% (2,715)	5% (1,551)	4% (1,141)	31,589
2018*	55% (10,836)	22% (4,444)	11% (2,251)	7% (1,367)	4% (873)	19,771
2019	51% (7,540)	26% (3,821)	12% (1,705)	7% (995)	4% (627)	14,688
2020	52% (6,126)	26% (3,110)	11% (1,314)	7% (768)	4% (497)	11,815



*CA Assembly Bill 953 Stop Data Collection requirements began on 12/20/2018

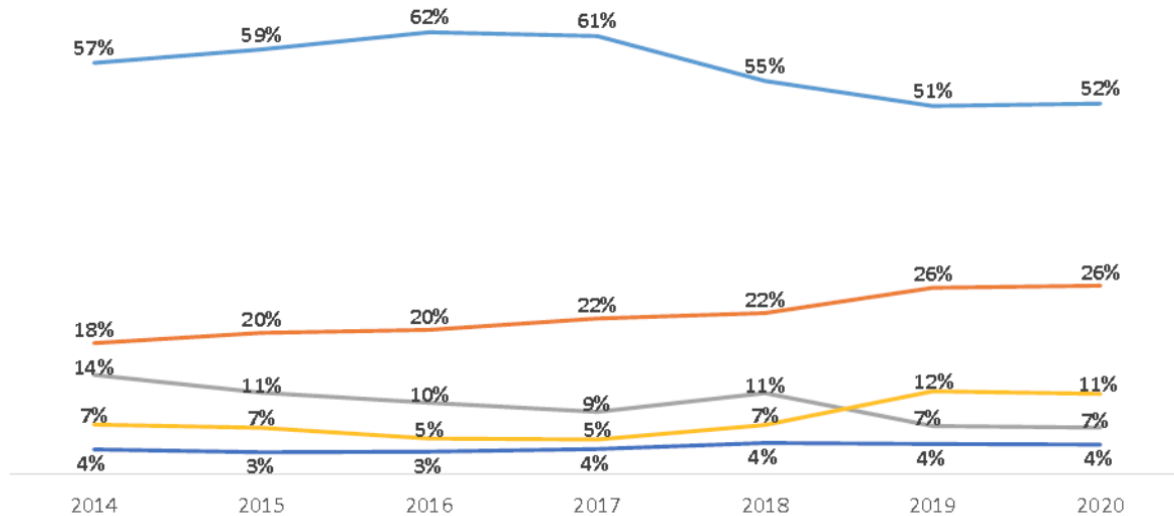
5

These decreases were accomplished with no compromise to officer safety, and the above chart indicates that OPD substantially ameliorated disparate treatment and/or outcomes during this period. OPD has also focused close attention to the categories of stop outcomes, including searches, recoveries, and arrests. Sustained high levels of arrests, for example, indicate that the intelligence-led policing model is working. It also reflects the Department's understanding that stops based on objective information has myriad benefits: it reduces the policing "footprint" within the community by decreasing the likelihood of unnecessary police interactions while also mitigating individual biases that may precipitate stops.

Plaintiffs' attorneys note that the data also shows that African Americans continue to be stopped at a higher rate than other demographic groups in Oakland:

Non-Dispatch Stop Percentages by Race 2014-2020

Race	2014	2015	2016	2017	2018*	2019	2020
Afr American	57%	59%	62%	61%	55%	51%	52%
Hispanic	18%	20%	20%	22%	22%	26%	26%
White	14%	11%	10%	9%	11%	7%	7%
Asian	7%	7%	5%	5%	7%	12%	11%
Other	4%	3%	3%	4%	4%	4%	4%



Even if the racial variance in stop data is not entirely attributable to OPD actions, there is much room for continued progress here, and the Department and City of Oakland have acknowledged as much in their most recent appearance in front of this Court. That said, the trend-line is undeniably positive, and the concrete data indicates that OPD is working to address some of the systemic biases within the Department.

The Risk Management Meetings which are discussed at greater length in the next section below, have been instrumental to the above-illustrated declines. Officers with significant numbers of stops of African Americans, with no yield or justification for the stop, are routinely identified and discussed and, when warranted, placed on supervisory monitoring or intervention. This process deals with discrete instances of biased policing and reinforces important cultural changes in the department by reminding all officers that OPD will not tolerate stops of

1 African Americans absent evidence- and/or intelligence-based justification for the
2 stop.

3 It appears to Plaintiffs' attorneys that the Department is on the cusp of
4 compliance with both the spirit and the letter of this Task, and OPD deserves
5 congratulations for its significant, demonstrated progress on this Task. The year-
6 over-year trend in the data speaks to institutionalized, sustainable change within
7 OPD.

8 **VII. TASK 41 (USE OF PERSONNEL ASSESSMENT SYSTEM AND RISK**
9 **MANAGEMENT)**

10 Task 41 pertains to the Use of a Personnel Assessment System (PAS) and
11 Risk Management and requires OPD to develop a risk management system to audit
12 the performance of specific members, employees, supervisors, managers, units, and
13 the Department as a whole. The IMT's most recent review of Task 41 (the Draft
14 74th IMT Report, dated August 2021) determined that OPD is once again in
15 compliance with this task.

16 When the IMT issued their 72nd Report, they indicated that approximately
17 80% of Vision reports and 66% of reports related to the PAS risk review process
18 have been completed. (72nd IMT Report, page 24) For more than a year, the new
19 PAS system was beset with data-retention and transition issues. Much time, effort,
20 and money has been spent migrating from the original risk management database
21 (IPAS) to its successor (Prime) to the newly implemented Vision. It now appears
22 that Vision is largely functional, and that it can fulfil its required role as a
23 relational database and early-warning system than can intervene to mitigate risks
24 in a meaningful way. The road to this point involved much complex, expensive, and
25 time-consuming work, but now that it largely complete, Plaintiffs' attorneys are
26 optimistic that Vision is to become the comprehensive and durable risk
27 management tool it was designed to be and concur with the IMT's assessment in the
28 Draft 74th Reports that "while many of the issues relevant to Vision have been

1 addressed, risk management data issues remain.” (Draft 74th IMT Report, p. 28).
2 This is why, even though the IMT has determined that OPD is “in compliance,
3 although we are concerned that the potential of the system is, for now, surpassing
4 its efficacious use.” (Draft 74th IMT Report, p. 29)

5 As the Court knows, there were many staffing-related delays in previous
6 months and years. The Department recently informed Plaintiffs’ attorneys that
7 these issues have been remedied. The City of Oakland also hired a data manager,
8 Dr. Leigh Grossman, who has stressed her commitment to a sustainable, risk
9 management process where every dimension related to PAS is reported out in a
10 comprehensive manner. Dr. Grossman compiles a monthly Risk Analysis Report
11 that is shared with major stakeholders. Although it is admittedly a work in
12 progress, the data included so far is comprehensive, and includes citywide numbers,
13 as well as data at the Area level, for Ceasefire, for the Violent Crimes Operation
14 Center (VCOC), and the Criminal Investigations Division. The most recent report
15 also included non-intel led traffic stop percentages, as well as data regarding
16 officers and staff who are on PAS monitoring. The very point of a risk management
17 system is to filter information and process it toward solutions, including
18 highlighting outlier officers (or groups of officers), and this is a solid step in that
19 direction. Members of the Stanford team have also commended Dr. Grossman’s
20 “rigorous cleanup” of data pertaining to potential disparities in the Department’s
21 internal discipline process. This will be discussed at greater length in Task 45,
22 below.

23 The data that underlies Vision underpins the Department’s entire risk
24 management apparatus, including the Risk Management Meetings (RMMs) that
25 take place at all supervisory levels of the Department. Plaintiffs’ attorneys have
26 attended many of these meetings and are consistently impressed by the use of data
27 to discuss stop data, possible patterns of bias in stops, complaints, the ratio of
28 intelligence-based and non-intelligence-based stops, pursuits, and, perhaps most

1 crucially, officers who are under supervisory monitoring and/or intervention. It is
 2 clear that there is real institutional buy-in to this process, which is reinforced by the
 3 presence of command-level officers who oversee drilldowns into specific officers and
 4 squads. This is a crucial feature of the RMM process, and OPD must commit to
 5 continuing this process in the coming years. All told, Plaintiffs' attorneys can report
 6 that RMMs are an unequivocal force for positive change at OPD.

7 Finally, Plaintiffs' attorneys offer two suggestions to the Department as it
 8 nears compliance with this task. First, OPD must ensure that all twenty (20)
 9 components of Task 40 of the NSA are incorporated into Vision. While most of
 10 these elements are already captured and have been discussed extensively by all
 11 parties over the years (stop data, pursuits, complaints), it is not clear that every
 12 required element is. Specifically, Plaintiffs' attorneys have previously highlighted
 13 three components of Task 40 that have never been discussed at any RMM they have
 14 attended, and may not be fully integrated into the Vision system:

- 15 • "All civil suits and/or tort claims related to members' and
 16 employees' employment at OPD, or which contain allegations which
 17 rise to the level of a Manual of Rules violation" (Task 40, item #7)
- 18 • "All charges of resisting or obstructing a police officer, assault on a
 19 police officer, or assault-with-a-deadly-weapon on a police officer."
 20 (Task 40, item #13).
- 21 • "Criminal cases dropped due to concerns with member veracity,
 22 improper searches, false arrests, etc." (Task 40, item #19)

23 Please note: Assault/Battery on a Police Officer & Obstruction/Resisting a
 24 Police Officer (sole charges) was discussed at the Risk Management Meeting on
 25 August 25, 2021. (Slide 8.1 at the August 25, 2021 Risk Management Meeting).
 26 Very recently, Plaintiffs' Attorneys have also become aware of documents that show
 27 outreach by the OPD to both the Public Defender and District Attorney regarding
 28 identification on officers that have come to the attention of these entities and who

1 they believe cause problems. Plaintiffs' attorneys have no information on what was
2 done with this information. We will endeavor to find the answer to this question
3 and report on it at the Case Management Conference scheduled for September 1,
4 2021.

5 Second, Plaintiffs' once again urge the Department to codify the very robust
6 RMM process via a general order and/or training bulletin that details what a Risk
7 Management Meeting is, and that outlines the roles it demands of participants and
8 subjects. The Department has been proactive about using the risk management
9 data it has available since the Vision system came online. The buy-in to this
10 process by nearly every single supervisor has been nothing short of remarkable.

11 Plaintiffs' attorneys remember the role that Doctors Eberhardt and Monin,
12 the IMT and Plaintiffs' Attorneys played as a driving force for conducting
13 investigations and drilldowns into this data. One day all these people will be gone
14 and the OPD will be responsible for the Risk Management process. We believe that
15 the OPD can accomplish this task (particularly under the leadership of Chief
16 Armstrong), but slippage in this area cannot be tolerated by the current and future
17 leadership in the Oakland Police Department.

18 The surest way to ensure that the current RMM system is maintained in the
19 medium- to long-term future of the Department is to codify it, including specific
20 requirements that at least one command-level officers attend Area-level RMMs, and
21 that focused drilldowns into problematic officers and/or squads continue. Absent
22 such action, the entire Risk Management apparatus is subject to the whims of
23 future OPD commanders. Chief Armstrong recently attended a Risk Management
24 Meeting that "failed to meet the quality" (Draft 74th IMT Report, p. 33) that the
25 IMT and Plaintiffs' attorneys have come to expect. At the conclusion of the meeting,
26 Chief Armstrong expressed his displeasure to all participants. We agree with the
27 IMT that "this measure of reflective, quick action on the part of the Chief is the type
28 of leadership that the Department has needed." Draft 74th IMT Report, p. 33) In

fact, within days, at a subsequent Area 3 Risk Management Meeting, “drill downs” were discussed in detail while a Deputy Chief was present.

It is not lost on Plaintiffs’ attorneys that a future Chief, overseeing OPD after the NSA has mercifully drawn to a close, might tolerate (or even prefer) a hollowed-out RMM process that is not as probing and expansive as the current iteration. Plaintiffs’ attorneys once again encourage OPD to take the commonsense step of institutionalizing all aspects of the robust RMM process that currently exists into permanent OPD policy.

In addition, there is a preliminary draft of the Risk Management policy that has been reviewed by Plaintiffs’ Attorneys. We hope that the final document will stress, at a minimum: (1) the need to “drill down” by supervisors and to report outliers as has been done repeatedly in the Risk Management Meetings; (2) that a Deputy Chief and/or Chief attend every Risk Management Meeting; and (3) a plan as to what will be done with those officers who “live” on the charts as outliers in stops without yields and other issues that have made them stay there. As Chief Joshi said in one of his last Risk Management Meetings prior to becoming Chief of the Alameda Police Department, outliers cannot “live” on the charts as outliers without some appropriate action being taken by supervisors and commanders.

Vision is the main repository for data that is germane to virtually all the NSA tasks and is the key to compliance with the NSA itself. The Department must be lauded for moving back into compliance with Task 41. The recent progress here is undeniable, and truly critical to the NSA moving forward.

VIII. TASK 45 (CONSISTENCY OF DISCIPLINE POLICY)

OPD is in partial compliance with Task 45, which requires that discipline is imposed in a fair and consistent manner. The Hillard Heintze “Police Discipline Disparity Study” (Disparity Study) has been the major locus of Plaintiffs’ attorneys Task 45 discussions since it was issued in April 2020.

This report determined that “black sworn employees were more likely to have

1 their allegations result in a sustained finding than other employees.” Specifically,
 2 this report found that:

- 3 • “Over the five-year time period, black employees were 37% more
 4 likely to have an allegation against them result in a sustained
 5 finding.” (Disparity Study, p. 10).
- 6 • For Class One complaints (the most serious complaints), black
 7 individuals are almost 39% more likely to have the complaint
 8 sustained, while controlling for gender and years of service.”
 9 (Disparity Study, p. 10).
- 10 • The IAD policy allowed sergeants to be “fact finders and
 11 adjudicators has the potential to lessen an investigator’s neutrality”
 12 and that this system “is not consistent with promising practices
 13 used in departments similar in size to Oakland.” (Disparity Study,
 14 p. 11)
- 15 • “Twice as many black trainees were released [from OPDs Academy]
 16 than white or Hispanic trainees. (Disparity Study, p. 41)
- 17 • FTO (Field Officer Training) completion rates for black and Asian
 18 trainees lagged behind those for Hispanic and white trainees.”
 19 (Disparity Study, p. 42)
- 20 • Just 18.68% of sworn respondents believe that OPD’s disciplinary
 21 process is fair, while 81.32 percent of respondents disagreed with
 22 the statement “OPD’s disciplinary process is fair.” (Disparity Study,
 23 p. 17)

24 At the time these apparently damning findings were published, Plaintiffs’
 25 attorneys described them as a violation of NSA Task 45, which requires consistency
 26 of discipline. Judge Orrick subsequently described “racial disparities” as the
 27 “hardest” issue, as well as the issue that “started this case.” (09.22.20 WHO CMC
 28 Transcript, p. 49), and City of Oakland and OPD leadership promised to address the

1 disparities uncovered by the Hillard Heintze Report. The Disparity Study
2 concluded with series of 14 recommendations that it urged the OPD to adopt, and
3 OPD now reports that all but one of these recommendations have now been
4 implemented, with each of these recommendations codified in OPD policy and
5 procedure. A Racial Disparity Study working group was also established. This
6 group was tasked with working with Oakland's Data Manager, Dr. Grossman, and
7 the Stanford University SPARQ (Social Psychological Answers to Real-world
8 Problems) team, to determine how OPD could use the data at its disposal to
9 mitigate racial disparities. The SPARQ team has also developed a curriculum
10 called "Cultural Competency Training", that will be assigned to all OPD sworn
11 personnel.

12 In the period since Plaintiffs' last Case Management Conference Statement
13 to this Court, Stanford University professors Dr. Eberhardt and Dr. Monin have
14 reported to Plaintiffs' attorneys, and the Department, that much of the data
15 underlying the original Disparity Study was not supportive of the findings. More
16 specifically, it was discovered that when the City of Oakland had given both
17 personnel files and IAB files to create the data that was given to Hillard Heintze,
18 they inadvertently counted some discipline that appeared in both these documents
19 twice, with the result that many of the data relied on by Hillard Heintze was flawed
20 and thus their findings may have been distorted too.

21 Plaintiffs' attorneys are, admittedly, not data scientists, and defer to the
22 Stanford SPARQ team's determination that the dataset that OPD originally
23 provided to Hillard Heintze was not reliable. In addition, we are encouraged that
24 Doctor Grossman has apparently provided a fix in VISION that will prevent this
25 duplication from occurring again.

26 On very short notice (and while both stricken with COVID and on a vacation)
27 Dr. Monin, as part of the Racial Disparity Working Group, performed a preliminary
28 analysis on the "clean" data (which he describes as "rigorously cleaned up" by Data

1 Manager Dr. Grossman and Captain Lau of IAD). This is a “very different dataset”
 2 from the data OPD provided to Hillard Heintze. It incorporates fewer allegations,
 3 over a two-year period (2019-2020) that does not overlap with the data that was
 4 provided to the Hillard Heintze firm (2014-2018).

5 Dr. Monin’s review of this data suggests that disparities in discipline
 6 outcomes do remain. Although the disparities are nowhere near as large as those
 7 reported in the Hillard Heintze Discipline Study, Dr. Monin’s preliminary findings
 8 suggest that “in most analyses allegations against African Americans seem to be
 9 slightly more likely to be sustained, though this differs quite a bit between the two
 10 years analyzed (2019 and 2020), and even whether the disparities appear more in
 11 division-level or in IA investigations varies between 2019 and 2020, making it hard
 12 to locate disparities conclusively with this limited dataset.” Specifically, African
 13 American officers:

14
 15 *“...seem to benefit slightly less often than other groups from the*
 16 *“summary finding” – which in 99% of cases means a non-sustained*
 17 *case. Whereas the average for all 4 groups is 14.8% for DLI SF, it’s only*
 18 *12.4% for Blacks (vs. 17.2% for Hispanics). And whereas the average for*
 19 *IAD “summary finding” for all 4 groups is 2.0%, it’s only 1.2% for*
 20 *Blacks (vs. 2.6% for Whites). This deserves some attention as it could be*
 21 *hiding disparities. Again the concern is that some groups may benefit*
 22 *more often from a summary finding (which again means in 99% of the*
 23 *cases that the allegation is not sustained), which would remove them*
 24 *from the other counts. (Dr. Monin IAD – August 2021 Preliminary*
 25 *Analyses, p. 3)*

26 However, Dr. Monin also found large year-to-year discrepancies in the data.
 27 Based on the small sample size, and the fluctuations between the two years, Dr.
 28 Monin requests data from more years to get a more robust picture of potential
 discipline disparities within OPD. It is imperative that OPD provide such data to
 Dr. Monin and the SPARQ team as quickly as possible.

A subsequent preliminary report by Data Manager Dr. Grossman analyzed

1 Division Level Investigations and Internal Affairs Investigations at the case and
 2 officer level, and determined:

3
 4 *For Division Level Investigations, the percentage of sustained cases*
 5 *varies year to year for Black officers. In 2019, their sustained rate is*
 6 *higher than any other race and in 2020, their sustained rate is in line*
 7 *or lower than the other races. Overall, for Division Level Investigations*
 8 *(2019 & 2020 combined), the Black sustained rate is slightly higher*
 9 *than the other races.*

10 *For Internal Affairs Investigations, the sustained rate for Black officers*
 11 *is relatively stable, while for officers of other races, the sustained rate*
 12 *fluctuates. It is important to note the number of Internal Affairs*
 13 *Investigations is much smaller than the number of Division Level*
 14 *Investigations. A small increase or decrease in the number of sustained*
 15 *cases could have a fairly large impact on the sustained percentage. For*
 16 *2019, the sustained percentage for Black officers is below the*
 17 *percentage for White officers. In 2020, the sustained percent decreases*
 18 *for all races except Black officers. Overall, for 2019 and 2020, the*
 19 *sustained rate for Black officers is higher than the sustained rate for*
 20 *officers of other races.*

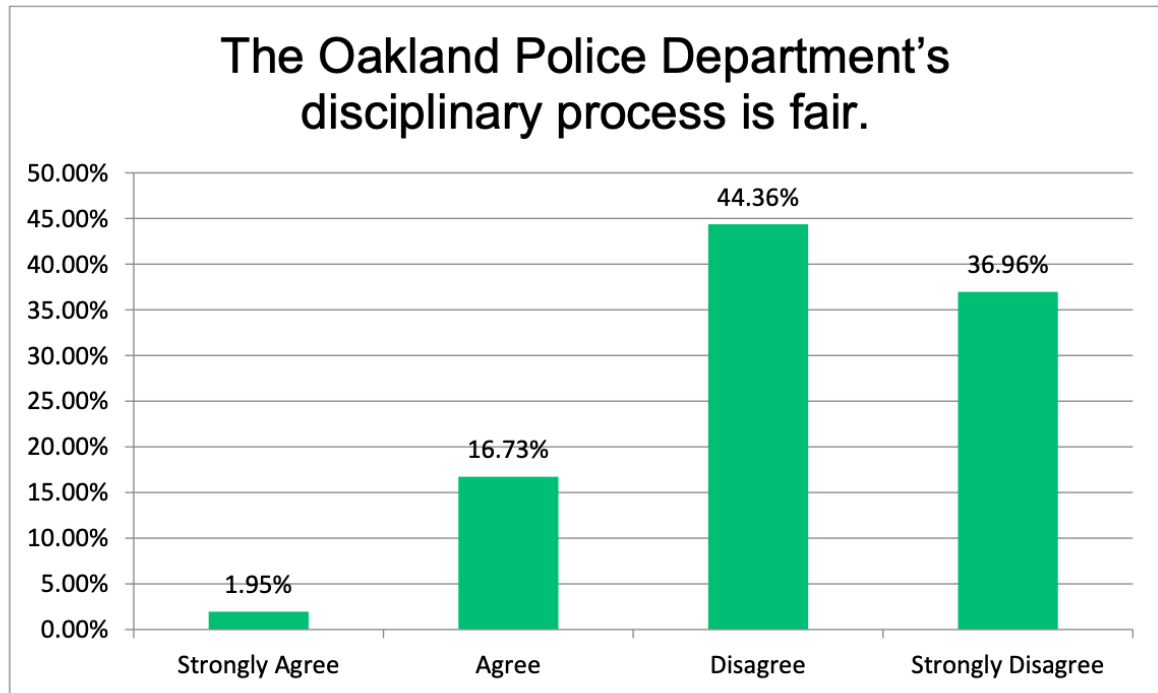
21 . (Dr. Grossman IAD Racial Disparity Preliminary Findings, 08/17/21,
 22 p. 1)

23 Now that OPD and other stakeholders are working with an apparently
 24 reliable dataset, it appears that the Department is much better positioned to
 25 monitor disparities in the IAD process. The preliminary findings excerpted above
 26 appear to provide a firm foundation for future analyses of discipline disparities at
 27 OPD.

28 Lastly, Plaintiffs' attorneys must once again emphasize that discipline
 disparities can take multiple forms. During Plaintiffs' attorneys many years of
 involvement with OPD, we have noticed that supervisors and command staff often
 receive lighter discipline, if any, than rank-and-file officers. Those in charge of Risk
 Management Meetings often direct their gaze down the organizational chart, and
 command staff are rarely discussed with the brutal, antiseptic honesty reserved for
 the lowest-level patrol officers. Discrimination by rank may well be as important a

disparity as discrimination by race. This is suggested in the survey of officers by Hillard Heintze, which found that more than four-out-of-five respondents (including many white and Asian officers) disagreed with the statement “OPD’s disciplinary process is fair.” (Hillard Heintze Report, p. 7):

Only 18.68 percent of the sworn respondents agreed or strongly agreed that the disciplinary process is fair.



(Note: Although these survey results appear in the same Discipline Disparity Study that was grounded in the “bad” data provided by OPD, the surveys of sworn officer regarding their subjective assessments of discipline at OPD was unrelated to said data, and therefore remains a valid data point.)

Supervisory accountability and equitable treatment regardless of rank are critical to the OPD discipline process. To the Department’s credit, there are some recent indicators of progress on this front. Each Report of Internal Investigation (ROI) now includes a section that specifically pertains to a supervisor’s responsibility for the alleged misconduct of the officer(s) they command. Dr. Grossman performed a study of allegations related to the George Floyd/Black Lives Matter protests last summer that determined “the sustained rate for allegations

against supervisors was almost twice as high as the sustained rate for officers”: (Dr. Grossman Protest Analysis, August 23, 2021, p. 1)

Allegations Against Named OPD Officers and Supervisors/Commanders

	Sustained Allegations	Not-Sustained	Exonerated	Unfounded	Admin Closed	Total Allegations
May 29, 2020						
Officers	9% (5)	13% (7)	35% (19)	41% (22)	2% (1)	54
Supervisors/Commanders	14% (2)	7% (1)	36% (5)	43% (6)	0	14
May 30, 2020						
Officers	20% (1)	0	80% (4)	0	0	5
Supervisors/Commanders	0	0	100% (1)	0	0	1
May 31, 2020						
Officers	20% (10)	12% (6)	47% (23)	20% (10)	0	49
Supervisors/Commanders	25% (7)	36% (10)	29% (8)	11% (3)	0	28
June 1, 2020						
Officers	17% (12)	31% (22)	53% (38)	0	0	72
Supervisors/Commanders	37% (7)	0	37% (7)	26% (5)	0	19
Total						
Officers	16% (28)	19% (35)	47% (84)	18% (32)	1% (1)	180
Supervisors	26% (16)	18% (11)	34% (21)	23% (14)	0% (0)	62

Dr. Grossman concedes that this one example is “not the perfect measure of accountability”, but it is a data point that may indicate OPD’s progress in holding supervisors to account at the same standard as subordinate officers. Time will tell if this is an isolated example or indicative of new era of supervisory accountability within the Department.

CONCLUSION

When Chief Armstrong was sworn-in immediately prior to our last Case Management Conference before this Court, he promised: “Under my leadership, OPD will have a laser focus on getting each [NSA] task in compliance, while practicing constitutional policing, fair and unbiased treatment of our community. This reflects the strong values of the City of Oakland. Moving the Department into compliance with the Settlement Agreement is one of my top priorities. But in order to achieve that goal, it requires a cultural change within the organization. And that

1 change starts today.”²

2 Six months into his tenure, Plaintiffs’ attorneys are pleased to report that his
3 actions, and those of the personnel he oversees, reflect Chief Armstrong’s pledge.
4 The IMT likewise commended Chief Armstrong’s “strong leadership” in their most
5 recent IMT Report. (Draft 74th IMT Report, p. 33). OPD has attained compliance
6 with three NSA Tasks since the last Case Management Conference and is closer to
7 compliance in several other Tasks than it was in February 2021, including what are
8 arguably the two most important tasks in the NSA, Task 5 (Internal Affairs) and
9 Task 34 (Stop Data). After years of backsliding, there is real momentum toward
10 substantive compliance with multiple outstanding NSA tasks.

11 OPD’s progress is reflected in studies performed by police reform activists
12 monitoring OPD and other similar-sized police departments in the United States.
13 The activists at Campaign Zero, one such organization, advocate criminal justice
14 reform and use data to measure progress. They examined the rate of police
15 shootings, fatal and non-fatal alike, per 10,000 arrests in 39 police departments
16 with jurisdictions of 400,000 people. Oakland had the lowest rate of all cities that
17 were surveyed:

18 ///

27 _____
28 ² <https://sanfrancisco.cbslocal.com/2021/02/08/oakland-native-leronne-armstrong-sworn-in-as-chief-of-police-in-emotional-ceremony/>

Police Shootings Rates in Cities

Rate of police shootings (fatal and nonfatal) per 10k arrests among police depts with jurisdictions of over 400k population.

	2013 ..	2014 ..	2015 ..	2016 ..	2017 ..	2018 ..	2019 ..
DENVER, CO	4.0	2.0	3.3	4.0	2.0	2.7	3.8
JACKSONVILLE, ..	2.7	3.5	4.2	4.8	4.1	2.3	3.7
ALBUQUERQUE, ..	4.3	3.1	4.1	2.9	4.3	4.5	3.6
MILWAUKEE, WI	3.3	2.5	4.4	2.9	2.1	2.6	3.6
DALLAS, TX	4.7	6.0	4.1	3.8	2.2	1.3	3.4
EL PASO, TX	1.5	0.5	3.3	1.8	1.2	1.2	3.1
LOS ANGELES, ..	5.0	3.8	4.2	4.0	2.6	2.6	2.9
ARLINGTON, TX	2.3	1.2	2.9	0.9	7.1	2.1	2.9
CHARLOTTE-ME..	2.6	3.0	2.0	5.1	2.1	2.3	2.8
SAN JOSE, CA	3.3	2.3	7.4	3.8	5.7	3.9	2.7
PHOENIX, AZ	4.4	3.5	3.3	5.6	4.2	8.4	2.7
MEMPHIS, TN	2.7	2.3	3.2	2.8	1.3	2.6	2.6
BALTIMORE, MD	2.5	2.4	4.3	4.4	3.4	2.3	2.4
LONG BEACH, CA	8.2	3.1	5.8	5.4	6.6	3.0	2.4
SAN FRANCISC..	4.6	5.4	5.4	2.0	4.3	3.6	2.1
AUSTIN, TX	2.4	1.1	2.1	2.6	3.2	4.5	2.1
CHICAGO, IL	6.0	7.3	5.9	7.6	5.9	3.9	2.0
SAN DIEGO, CA	2.2	2.2	3.3	1.7	2.0	1.8	2.0
INDIANAPOLIS, ..	2.0	5.3	5.0	4.3	2.0	1.2	2.0
TUCSON, AZ	2.8	1.9	1.9	2.4	0.7	3.5	1.9
LAS VEGAS ME..	1.7	2.3	2.4	1.5	3.2	2.9	1.8
VIRGINIA BEAC..	1.6	0.9	2.0	0.0	2.1	0.6	1.8
MINNEAPOLIS, ..	0.7	1.2	2.0	0.8	1.7	2.6	1.7
SACRAMENTO, ..	1.6	2.5	1.1	1.8	3.6	1.4	1.5
NEW YORK, NY	1.1	0.9	1.1	1.3	0.9	0.8	1.3
MESA, AZ	1.2	2.1	2.3	3.5	2.1	5.3	1.2
MIAMI, FL	1.6	0.3	1.2	1.2	0.5	1.0	0.5
OMAHA, NE	3.1	2.5		3.7		2.6	0.5
OAKLAND, CA	6.6	0.0	6.5	0.0	1.0	1.1	0.0

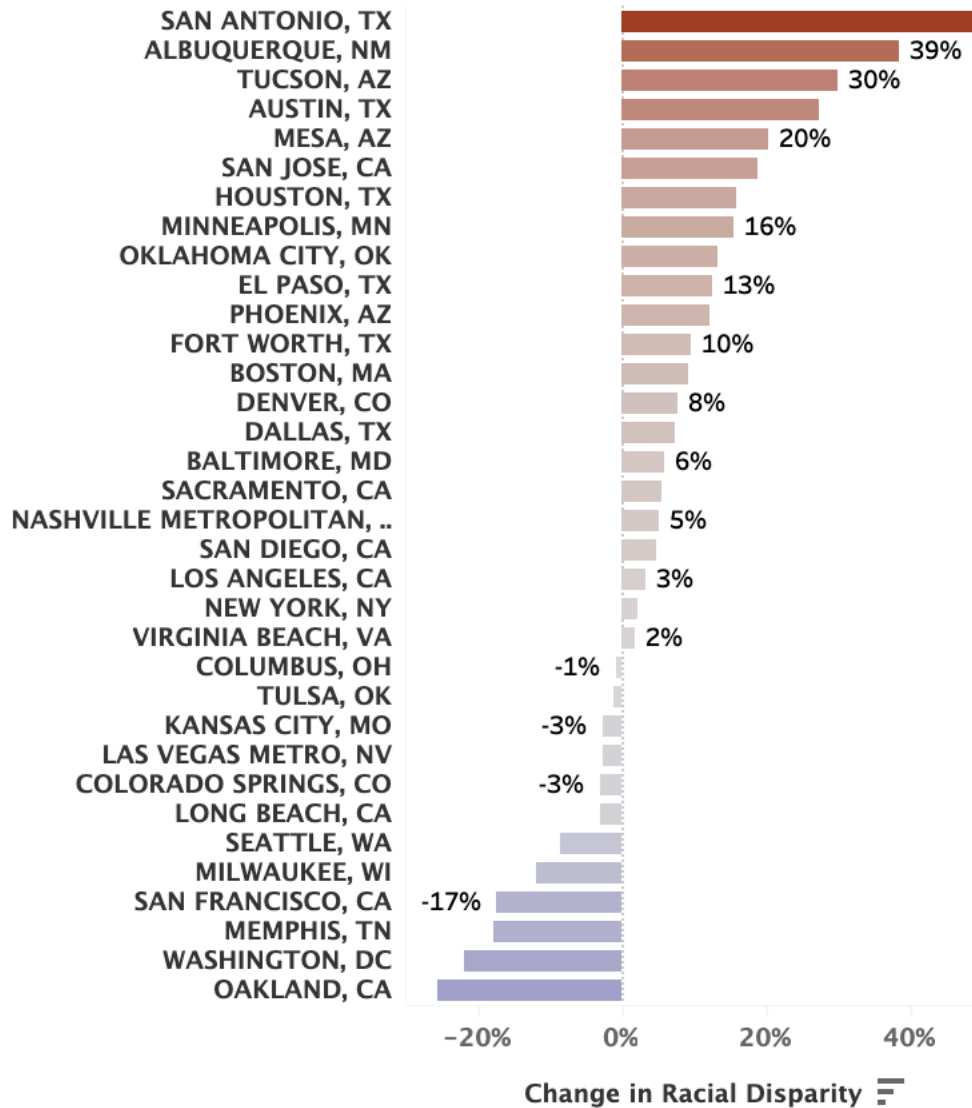
(<https://public.tableau.com/app/profile/ssinyangwe/viz/PoliceScorecard/PoliceShootings>)

Campaign Zero also found that among these police departments, Oakland did the most to reduce black-white arrest disparities in the period between 2013-2019. This aligns with the laudable progress on Stop Data that is covered earlier in this Case Management Conference Statement:

///

Arrest disparities haven't reduced.

Change in Black-white arrest disparity from 2013-19 in jurisdictions with 400k+ population. UCR arrests data and demographics from 2013 and 2019 US Census ACS.



(<https://public.tableau.com/app/profile/ssinyangwe/viz/PoliceScorecard/DrugArrestDisparities>)

There is more good news. The IMT reports it did not disagree with **any** of the findings in the FRB reports they reviewed in their 74th Report. Similarly, there was no disagreement with **any** of the Internal Affairs findings in the George Floyd

1 Protests.

2 Of course, there are also real obstacles. As noted above, Plaintiffs' attorneys
3 are eager to review the results of the IA investigation into the offensive Instagram
4 memes under the handle "@crimereductionteam", which is due just days after this
5 Case Management Conference. The quality of this investigation will be a critical
6 barometer of the Department's progress toward Task 5 compliance. In light of the
7 Hillard Heintze fiasco, Task 45 compliance will ultimately require fuller analysis of
8 discipline disparities within OPD, not only because a comprehensive investigation is
9 overdue, but also to demonstrate that OPD is able to holistically compile, refine,
10 and analyze the data its risk management apparatus produces. External
11 institutions that can support and verify OPD's future compliance with the core
12 tenets of the NSA long after Plaintiffs' attorneys' role draws to a close, including the
13 Inspector General and the Police Commission, are expanding their capacities. Both
14 entities can and should audit the Department as necessary.

15 Similarly, the Oakland Police Department, the elected officials that oversee
16 the Department, and the external institutions like the Police Commission and
17 Inspector General, and the Independent Monitoring Team must build on the
18 progress documented in this Case Management Conference Statement. It is now
19 time to run through the finish line and bring OPD into full and final compliance
20 with all outstanding Tasks mandated by the NSA.

21 Toward that end Plaintiffs' Attorneys are initiating talks with City Officials
22 to set up meetings for purposes of discussing next steps forward and what final
23 compliance might look like. The details are being worked out, and we expect talks to
24 begin within several weeks. Plaintiffs' Attorneys are mindful that talks of this
25 nature began in 2015 and the end of the NSA was projected for June, 2016. The sex
26 scandal that rocked OPD put an end to these talks. This case is now approaching
27 21 years in length, while the NSA has entered its nineteenth year of existence.

28 As the above charts indicate, the Oakland Police Department has moved from

1 being the one of the worst police departments in the San Francisco Bay Area to
2 being one of the best police departments in comparable cities in the country.

3 Assuming the Instagram case is handled appropriately, there is no reason that the
4 Sustainability Period cannot start very soon.

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THE CITY'S STATEMENT

OVERVIEW

In his first six months, Oakland Police Chief Armstrong has exhibited the strong leadership this Department needs to sustain reform and cultural change in the Department. While commanding the Department's response to the increase in violent crime, Chief Armstrong has simultaneously continued to drive forward the Department's commitment to fair and equitable policing to achieve compliance with all NSA tasks. The City is proud to see this commitment reflected in the Monitoring Team's recent report moving the Department into full compliance on Use of Force Reporting (Task 24), Executive Force Review Board (Task 30), and Use of Personnel Assessment System (PAS) (Task 41). The City is confident that under Chief Armstrong's leadership, the Department will achieve full compliance on the tasks that are in partial compliance—Use of Force Investigations and Report Responsibility (Task 25), Vehicle Stops, Field Investigations, and Detentions (Stop Data) (Task 34), and Consistency of Discipline Policy (Task 45), and bring the two remaining out of compliance tasks into full compliance—Timeliness with Internal Affairs investigations (Task 2) and Internal Affairs Complaint Procedures (Task 5). The City includes in its filing an updated list of Department commanders responsible for task compliance. Ex. 1, *Oakland Police Department NSA Task Compliance Responsibility Chart* (Aug. 25, 2021).

In this status report, the Department and the City's leadership respectfully update the Court on the following: (1) the City's efforts to ensure racial equity within the Department (Task 45), (2) the Department's efforts to reduce racial disparities in policing (Task 34), (3) policy development and publications, (4) the Department's progress on force investigations and report responsibility (Task 25), (5) the Department's progress toward meeting Internal Affairs investigation timelines (Task 2), and (6) the Department's completion of special force boards related to Summer 2020 protests (Task 26).

I. THE CITY'S ONGOING EFFORTS TO REDUCE RACIAL DISPARITIES

The City remains acutely aware that “the nut of this case remains what it was in the beginning, which is racial disparity.” Dkt. 1404 at 3:22-23, Sept. 22, 2020 Court Hr’g Tr. The Department’s guiding principles center on fairness and procedural justice. Addressing racial equity both internally and externally is critically important to uphold and promote these principles and to cement the Department’s foundation of sustainable reform.

A. Internal Race and Equity Work

The Department-commissioned *Oakland Police Department Police Discipline Disparity Study* (May 2020) made fourteen recommendations, many particularly focused on racial equity, to infuse fairness in internal misconduct investigations and outcomes, as well as in the Academy and Field Training Programs. The Department developed an internal working group to champion implementation of the recommended measures as well as discuss, develop, and implement additional practices to ensure equity in internal investigations and training. The working group meets regularly, typically once a month, with a steering committee which includes stakeholders outside of the Department, including the Director of the City’s Department of Race and Equity, representatives from police officer associations advocating racial equity, the Stanford research team, and the plaintiffs’ attorneys in this case.

The Department has implemented nearly all of the Study’s fourteen recommendations and designed and implemented additional measures as set forth in the attached chart, *Race and Equity Work in Discipline Disparity Study Recommendations* (Aug. 2021). Ex. 2. Updates occurring between February and August 2021 are featured in gold.

Over the last several months, the Department completed a pilot program separating the fact finder and adjudicator in a subset of internal investigations. In

1 each investigation, the fact finder submitted to the reviewing supervisor only the
2 facts found during the investigation and did not submit an ultimate recommended
3 finding (e.g., sustained, unfounded). The reviewing supervisor reviewed the case
4 and made a recommended finding. The Department is still in the process, however,
5 of reviewing the results of the cases in the pilot program to determine the impact, if
6 any, of separating the fact finder and adjudicator. Regardless of whether the
7 Department decides to more widely implement the practice followed in the pilot
8 program, at a minimum, supervisors will be required to make independent
9 recommendations and articulate the facts that support the recommended
10 determinations without deference to investigators' recommended determinations.

11 The Department has also expanded the practice it developed and
12 implemented more than a year ago of anonymizing, where possible and appropriate,
13 the demographic information about Department members who are the subjects of
14 internal investigations. The Department practices anonymization in internal affairs
15 case presentations to command staff for both case outcome decisions (i.e., whether
16 an allegation should be sustained against a member) and disciplinary
17 determinations. In addition, the Internal Affairs Captain has extended this practice
18 to the Captain's review of Division Level Investigations (DLIs). The IA Captain
19 admonishes sergeants or other supervisors presenting DLI facts and
20 recommendations to the Captain or the Captain's designee that presenters must
21 refrain from identifying the name, gender, race, or ethnicity of the subject member.

22 The final remaining item is rolling out specific training for investigators and
23 supervisors regarding race and equity in internal investigations. The Department
24 has determined that it will use a Stanford-developed cultural competency
25 curriculum. The Department's internal race and equity team in collaboration with
26 the City's Department of Race and Equity determined that the cultural competency
27 curriculum is more consistent with and better reflects the City's race and equity
28 training modules than the originally planned procedural justice (level three)

curriculum. The curriculum also adds a homework component to the traditional lecture format to allow members to think about each training module, develop questions, improve critical thinking about the material, and receive feedback from trainers. While there has been a slight delay in implementing the training due to curriculum planning and changes, the Department intends to begin training no later than Fall 2021.

1. First Look at 2019-2020 Internal Affairs Division (IAD) Case Outcome Data

The Department with the assistance of Stanford's Dr. Monin worked this past year to establish a clean and usable dataset containing IAD case outcome information for 2019-2020. This dataset will allow us to analyze racial disparities in the years following the 2014-2018 Study period. Based on this dataset, the City offers a first look and preliminary analysis of the 2019-2020 case outcome data.

The data in the tables below reflects investigation outcomes for sworn officers in the four largest racial groups³ represented in the Department in the following types of investigations: Division Level Investigation (DLI),⁴ Division Level Summary Finding, Internal Affairs (IA) Investigation, and Internal Affairs Summary Finding.⁵ The following investigation types were not included in the analyses primarily because they involve a different investigation process: Collision

³ The analysis excludes allegations against American Indian, Filipino, or Unknown to allow for better comparisons among Asian, African American or Black, Hispanic, and white officers.

⁴ A DLI is a formal investigation into allegations of misconduct that is conducted outside the Internal Affairs Division. DLIs are subject to the same investigative requirements as those conducted by IAD investigators. DLIs, typically involve only Class II allegations of misconduct.

⁵ A Summary Finding is an abbreviated internal investigation in which a finding can be reached without conducting a full, formal internal investigation because the correct finding can be determined with little or minimal follow-up based on the existing documentation, evidence, statements, and crime information data (e.g., Offense Report, Use of Force Report, video or digital recordings, complainant's statement, radio purge, Law Enforcement Records Management System (LRMS) records).

Boards, Pursuit Boards, Force Boards, Administrative Closures, and Informal Resolutions.

It is important to keep in mind that this first look at the data only uses the single variable of an officer's race. Many other variables may impact whether an allegation is sustained against an officer. Further analyses may aim to measure the impact or correlation of additional variables to the extent possible and appropriate.

a. Case Level Preliminary Findings

Tables 1 and 2 reflect outcomes of DLIs or IA Investigations in 2019 and 2020 for officers at the case level. Frequently, misconduct investigations involve multiple officers and multiple allegations for each officer. Breaking the data down by complaint investigation is not helpful in a racial disparity analysis because a complaint may involve officers of various races. Conversely, breaking the data down to the allegation level may result in the race of an individual officer with multiple allegations related to the same incident having an inflated impact on the data. Therefore, the initial preliminary analysis set forth below considers each instance when an officer was the subject of an internal misconduct case—recognizing that in many of these instances there were multiple allegations investigated—and determining whether an officer was sustained for one or more allegations in that case. Presenting the data this way yields results that are less sensitive to the number of allegations made against a particular officer in a particular instance and tends to be more in line with the central question of whether African American or Black officers are sustained for misconduct more often than other races.⁶

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⁶ As a reminder, the most significant finding of the 2020 Study was that between 2014 and 2018 Black or African American officers were on average 37% more likely to have an investigated misconduct allegation sustained against them than officers of other races. Once a case was sustained, however, there were no disparities in imposed sanctions.

Table 1: Division Level Investigations Including Summary Findings⁷

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
2019	296	100%	139	100%	227	100%	121	100%	783	100%
No Allegation Sustained	275	93%	115	83%	206	91%	109	90%	705	90%
1 or More Allegation Sustained	21	7%	24	17%	21	9%	12	10%	78	10%
2020	254	100%	142	100%	285	100%	131	100%	812	100%
No Allegation Sustained	233	92%	131	92%	259	91%	118	90%	741	91%
1 or More Allegation Sustained	21	8%	11	8%	26	9%	13	10%	71	9%
2019 & 2020	550	100%	281	100%	512	100%	252	100%	1,595	100%
No Allegation Sustained	508	92%	246	88%	465	91%	227	90%	1,446	91%
1 or More Allegation Sustained	42	8%	35	12%	47	9%	25	10%	149	9%

Table 2: Internal Affairs Investigations Including Summary Findings

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
2019	60	100%	19	100%	41	100%	23	100%	143	100%
No Allegation Sustained	43	72%	14	74%	32	78%	19	83%	108	76%
1 or More Allegation Sustained	17	28%	5	26%	9	22%	4	17%	35	24%
2020	98	100%	29	100%	78	100%	23	100%	228	100%
No Allegation Sustained	83	85%	21	72%	68	87%	21	91%	193	85%
1 or More Allegation Sustained	15	15%	8	28%	10	13%	2	9%	35	15%
2019 & 2020	158	100%	48	100%	119	100%	46	100%	371	100%
No Allegation Sustained	126	80%	35	73%	100	84%	40	87%	301	81%
1 or More Allegation Sustained	32	20%	13	27%	19	16%	6	13%	70	19%

For Division Level Investigations, the percentage of sustained cases varied year to year for Black officers. In 2019, the sustained rate for Black officers was higher than any other race, but in 2020, the sustained rate was the same as or lower than other races. Overall, for Division Level Investigations (2019 and 2020 combined), the sustained rate for Black officers was slightly higher (2-4%) than the rates for other races.

⁷ The tables provide comparison by raw number (n) and percentage (%) of sustained outcome rates among the four largest racial groups of sworn officers.

1 For Internal Affairs Investigations, the sustained rate for Black officers was
2 relatively stable, while for officers of other races the sustained rate fluctuated. It is
3 important to note the number of IA investigations is much smaller than the number
4 of DLIs. Thus, a small increase or decrease in the number of sustained cases has a
5 fairly significant impact on IA sustained percentage rates. In 2019, the sustained
6 rate for Black officers was lower than for white officers. In 2020, the sustained rate
7 decreased for all races except Black officers. Overall, from 2019-2020, Black officers
8 were sustained at a higher rate than officers of other races. Given the year to year
9 fluctuation and the small number of data, it may be helpful to include data from
10 additional years to complete a more robust and useful analysis.

11 **b. Allegation Level Preliminary Findings**

12 Tables 3 and 4 display findings at the allegation level. At the allegation level
13 the sustained rate generally decreases for each race, however there are trends
14 similar to those reflected at the case and officer level. The allegation level analysis
15 also allows us to view the disposition for each allegation. This may be a useful way
16 to analyze the data, particularly if we are able to consider whether there are certain
17 types of allegations that more often lead to particular outcomes.

18 ///

Table 3: Division Level Investigations Including Summary Findings

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
2019	498	100%	228	100%	386	100%	237	100%	1,349	100%
Sustained	22	4.4%	26	11.4%	23	6.0%	14	5.9%	85	6.3%
Not Sustained	26	5.2%	16	7.0%	25	6.5%	10	4.2%	77	5.7%
Exonerated	241	48.4%	97	42.5%	180	46.6%	119	50.2%	637	47.2%
Unfounded	195	39.2%	74	32.5%	143	37.0%	85	35.9%	497	36.8%
Admin Closure	4	0.8%	6	2.6%	4	1.0%	3	1.3%	17	1.3%
Informally Resolved	10	2.0%	9	3.9%	11	2.8%	6	2.5%	36	2.7%
2020	436	100%	241	100%	498	100%	221	100%	1,396	100%
Sustained	22	5.0%	15	6.2%	27	5.4%	15	6.8%	79	5.7%
Not Sustained	24	5.5%	10	4.1%	26	5.2%	11	5.0%	71	5.1%
Exonerated	226	51.8%	133	55.2%	264	53.0%	125	56.6%	748	53.6%
Unfounded	146	33.5%	76	31.5%	163	32.7%	63	28.5%	448	32.1%
Admin Closure	10	2.3%	1	0.4%	5	1.0%	3	1.4%	19	1.4%
Informally Resolved	8	1.8%	6	2.5%	13	2.6%	4	1.8%	31	2.2%
2019 & 2020	934	100%	469	100%	884	100%	458	100%	2,745	100%
Sustained	44	4.7%	41	8.7%	50	5.7%	29	6.3%	164	6.0%
Not Sustained	50	5.4%	26	5.5%	51	5.8%	21	4.6%	148	5.4%
Exonerated	467	50.0%	230	49.0%	444	50.2%	244	53.3%	1,385	50.5%
Unfounded	341	36.5%	150	32.0%	306	34.6%	148	32.3%	945	34.4%
Admin Closure	14	1.5%	7	1.5%	9	1.0%	6	1.3%	36	1.3%
Informally Resolved	18	1.9%	15	3.2%	24	2.7%	10	2.2%	67	2.4%

Table 4: Internal Affairs Investigations Including Summary Findings

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
2019	135	100%	39	100%	95	100%	46	100%	315	100%
Sustained	30	22.2%	6	15.4%	23	24.2%	5	10.9%	64	20.3%
Not Sustained	11	8.1%	7	17.9%	6	6.3%	8	17.4%	32	10.2%
Exonerated	40	29.6%	14	35.9%	30	31.6%	13	28.3%	97	30.8%
Unfounded	54	40.0%	12	30.8%	36	37.9%	20	43.5%	122	38.7%
2020	198	100%	61	100%	158	100%	38	100%	455	100%
Sustained	24	12.1%	13	21.3%	16	10.1%	2	5.3%	55	12.1%
Not Sustained	9	4.5%	5	8.2%	7	4.4%	3	7.9%	24	5.3%
Exonerated	82	41.4%	19	31.1%	74	46.8%	14	36.8%	189	41.5%
Unfounded	80	40.4%	24	39.3%	60	38.0%	19	50.0%	183	40.2%
Admin Closure	3	1.5%	0	0.0%	0	0.0%	0	0.0%	3	0.7%
Informally Resolved	0	0.0%	0	0.0%	1	0.6%	0	0.0%	1	0.2%
2019 & 2020	333	100%	100	100%	253	100%	84	100%	770	100%
Sustained	54	16.2%	19	19.0%	39	15.4%	7	8.3%	119	15.5%
Not Sustained	20	6.0%	12	12.0%	13	5.1%	11	13.1%	56	7.3%
Exonerated	122	36.6%	33	33.0%	104	41.4%	27	32.1%	286	37.1%
Unfounded	134	40.2%	36	36.0%	96	37.9%	39	46.4%	305	39.6%
Admin Closure	3	0.9%	0	0.0%	0	0.0%	0	0.0%	3	0.4%
Informally Resolved	0	0.0%	0	0.0%	1	0.4%	0	0.0%	1	0.1%

These analyses provide a solid first step from which to begin to analyze Internal Affairs discipline data. Due to the work conducted as part of the Racial Disparity Working Group, going forward it will be very easy to extract this data. A

1 report has been created in Vision that anyone with access can pull. The tables
2 included herein can easily be reproduced to identify new trends in the data.

3 **c. Comparison with 2014-2018 Data and Study Findings**

4 The Department cannot meaningfully compare its initial 2019-2020 data
5 analysis with the 2020 Study findings. A preliminary review of the data shows that
6 the 2019-2020 dataset is significantly different from the dataset used to complete
7 the 2020 Study. For example, the raw numbers alone are markedly divergent. The
8 Study's data included roughly 25,000 allegations against sworn officers over a 5-
9 year period—approximately 5,000 cases per year. The 2019-2020 dataset consists of
10 4,062 allegations in a 2-year period. This difference is likely the result of a number
11 of measures used to clean up the 2019-2020 data including removing duplicate
12 entries.⁸ In addition, the 2020 Study controlled for years of service and gender,
13 while the preliminary analysis of the 2019-2020 data looked only at race as the sole
14 variable. Therefore, while it would be fair to say that the Department's more recent
15 internal investigation outcome data appears to indicate that there was less racial
16 disparity in discipline outcomes from 2019-2020 than the Study found between
17 2014-2018, any comparison of the magnitudes of disparity would be flawed.

18 The City appreciates that this is an initial look at the 2019-2020 data. The
19 Department will continue to work with the Stanford team to further analyze the
20 data to determine whether there are important differences between IAD
21 investigation outcomes versus DLI investigation outcomes, differences between
22 outcomes for Class I and Class II misconduct investigations, and if there is a way to
23 meaningfully include or otherwise analyze allegations arising from Boards,

24
25 ⁸ It appears that the dataset used to complete the 2020 Study may have contained
26 an unknown number of duplicate allegation entries as well as outcomes from
27 investigation types that involve significantly different processes which likely
28 impacted the results to an unknown and probably unknowable degree. Nevertheless, it is important to the Department that its internal investigations and outcomes are fair and equitable. The Department intends to continue to prioritize equity in discipline, implement measures to improve equity at key points in the process, and measure the outcome data to monitor the efficacy of its work.

Summary Finding, Informal Resolution, and Administrative Closure cases.

2. The Academy and Recruiting

The Department continues to work to identify and mitigate potential bias in the academy and field training programs. The Department's training division, in collaboration with the Stanford team, identified areas of risk that may contribute to, reflect, or correlate with potential bias impacting police officer trainees. The training division now routinely tracks these areas of risk on a regularly updated spreadsheet to help identify and mitigate the risk of bias and ensure equitable treatment of police officer trainees in the academy and field training programs.

In July 2021, the Department commenced its 186th Basic Academy. Tables 5 and 5.1 reflects the demographics of the police officer trainees who entered the 186th Academy.

Table 5: OPD's 186th Basic Academy Demographics (Jul. 12, 2021)

Gender		Race/Ethnicity		Residency		Language		Education	
Female	7	Asian	4	Oakland	5	Spanish	13	High School	6
Male	25	Black or African American	7	Other	27	Cantonese	1	Some College	3
		Hispanic	15			Punjabi	1	AA/AS	6
		White or Caucasian	5			Tagalog	1	BA/BS	16
		Other	1			Twi	1	MAMS	1
						Other	1		
Total	32	Total	32	Total	32			Total	32

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Table 5.1: Race/Ethnicity & Gender in OPD's 186th Academy (Jul. 12, 2021)

Race/Ethnicity	Female	Male
Asian	0	4
Black or African American	2	5
Hispanic	5	10
White or Caucasian	0	5
Other	0	1
Total	7	25

During the first week of the academy, five police officer trainees resigned. In mid-August, a sixth trainee was removed from the academy, leaving 26 trainees remaining in the 186th Basic Academy class. Table 6 reflects the gender and race of the remaining 26 trainees. More than 92% of current trainees in the 186th Academy are non-white.

Table 6: Race/Ethnicity and Gender in OPD's 186th Academy (Aug. 19, 2021)

Race/Ethnicity	Female	Male
Asian	0	3
Black or African American	2	5
Hispanic	4	9
White or Caucasian	0	2
Other	0	1
Total	6	20

One of the methods that the Department employs in its effort to “recruit officers who reflect the diversity of Oakland in all of its forms” is to host recruiting booths at City events that draw a significant crowd. Dkt. 1426 at 5:14-15, Feb. 22, 2021 Court Hr’g Tr. While the lack of planned and permitted large scale events during the pandemic has afforded the Department fewer opportunities to recruit in this manner, it looks forward to increasingly resuming this practice as more events are scheduled. The Department recently recruited for the 187th Academy at the “Stand Up for a Safe Oakland” rally on July 10 which drew crowds estimated at 500-600 people, and the Department plans to recruit at anticipated upcoming events such as Oakland Pride (September), the Oakland Black Cowboy Parade

(October), the Black Joy Parade (February), and the Oakland Running Festival (March). The Department also staffs a recruiting booth at selected⁹ Oakland Athletics baseball games; the booth is located at the Coliseum entry gate with the most foot traffic (Gate D). Through its engagement at these events, the Department seeks to connect with those who live, work, visit, rally, and celebrate in Oakland, and attract academy applicants from that diverse array of people.

3. The Department is in Partial Compliance with Task 45, Consistency of Discipline Policy

The Monitoring Team assessed Task 45, Consistency of Discipline Policy, in its most recent report and determined that the Department is in partial compliance with this task. *See* Dkt. 1465 at 33, *74th Report* (Aug. 23, 2021).

To assess this task, the Monitoring Team reviewed all cases that resulted in sustained findings between January and April 2021. *Id.* at 31. In each case, unless otherwise documented in writing, the discipline fell within the range set forth in the Discipline Matrix. *Id.* The Monitoring Team also reviewed all *Skelly* hearing records for hearings completed between January and April 2021. *Id.* *Skelly* hearings are held for sustained misconduct cases in which discipline of one-day suspension or greater was recommended. The *Skelly* hearing reports each contained adequate justification for the results documented. *Id.* The Monitoring Team noted that the Internal Affairs Policy & Procedure Manual (Manual) as well as Training Bulletins that reflect Internal Affairs practices incorporate the requirements of Task 45. *Id.* at 30. As set forth in the Policy Development and Publication Update below, the City is pleased to report that on August 17, 2021 the Department published the revised Manual which is now effective. Training will be updated accordingly, consistent with the revised Manual.

Finally, the Monitoring Team noted that it continues to closely follow the Department's response to the 2020 Discipline Disparity Study. *Id.* at 33. As detailed

⁹ Staff associated with the Oakland Athletics select the games.

1 above, once the Department completes the cultural competency training, it will
2 have implemented all of the Study's recommendations plus two additional
3 measures. The Department expects that its progress will have a positive impact on
4 consistency of discipline as well as in many other areas of the Department. The
5 Department hopes to receive an assessment of full compliance on this task in the
6 near term.

7 **B. Reducing Racial Disparities in Policing**

8 The Department continues to sustain and further improve its previous
9 reduction in racial disparity in police stops. In the second quarter of 2021, the
10 Department further reduced its non-dispatch stop rate of African Americans to 47%.
11 See Fig. 1, *Non-Dispatch Stop Percentages by Race, Jan. 2016 to June 2021*.
12 This is the lowest quarterly non-dispatch stop rate for African Americans
13 documented by the Department. The rate is 8-9% lower than the stop rates reported
14 in the previous two quarters. And before this quarter, the lowest documented stop
15 rate for African Americans was 50%, achieved in the third quarter of 2019.

16 ///

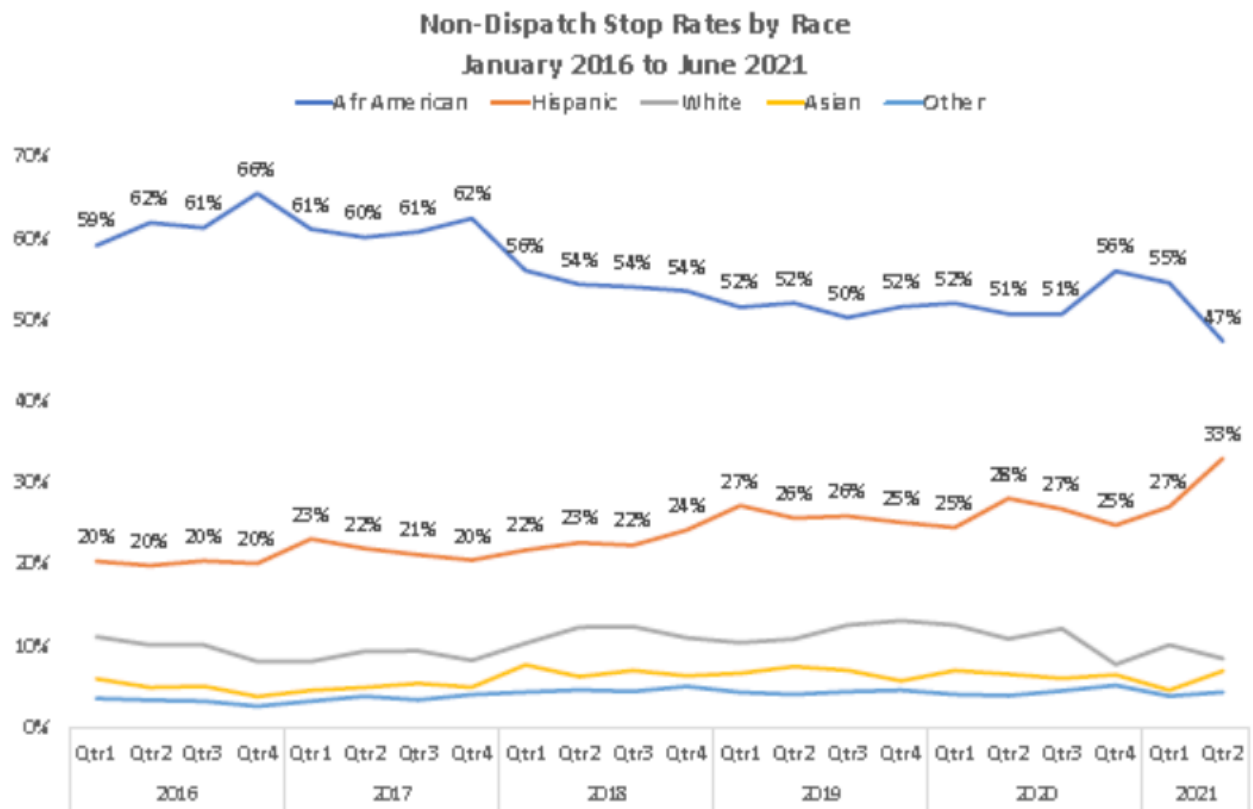
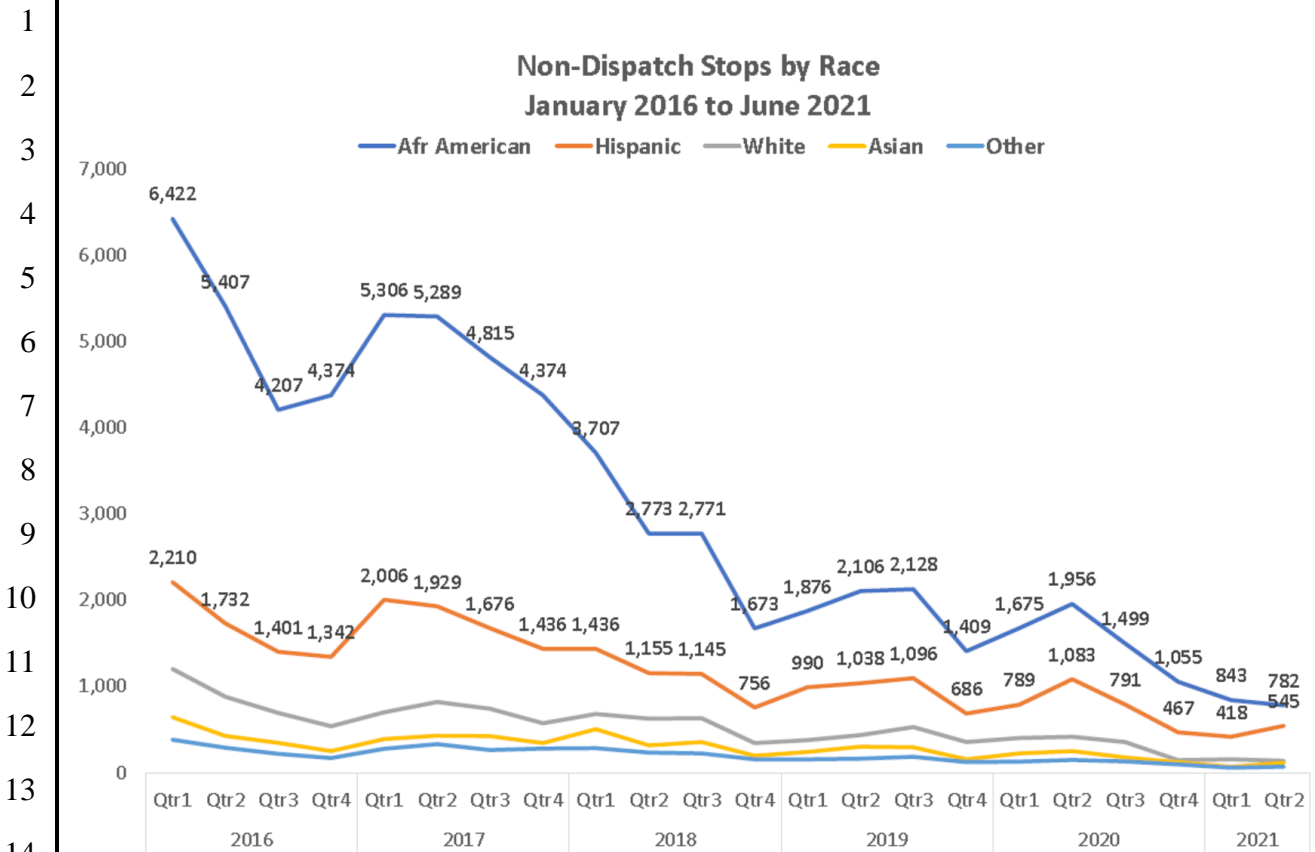


Fig. 1

The Department recognizes, however, that the second quarter of 2021 also reflects a 6% increase in the stop rate for Hispanics. The Department is continuing to analyze the upward trending stop rate for this group. Notably, however, while it appears that the stop *rate* for Hispanics is trending upward, the *number* of stops continues to trend lower year over year, despite an uptick in the number of stops in the second quarter of 2021. See Fig. 2, *Non-Dispatch Stops by Race, Jan. 2016 to June 2021*. As discussed more fully in previous filings, as the overall number of non-dispatch stops continues to decline, the reduction in footprint has the most significant impact on African Americans and Hispanics, leading to the greatest reductions in the past several years in the raw number of stops of members of each group. See, e.g., Dkt. 1358 at 19, *Joint Case Management Statement* (Feb. 18, 2020).

///



15 *Fig. 2*

16 While the overall number of non-dispatch stops have declined significantly,
 17 the Department's intelligence-led (intel-led),¹⁰ non-dispatch stops are up 6% from
 18 last year for the year-to-date ending July 2021. See Fig. 3, *Monthly Risk Analysis*
 19 *Report—Citywide, Through July 31, 2021* (excerpted). The increase of intel-led stops
 20 and the overall decline of non-dispatch stops when taken together results in a
 21 dramatic decrease of in the number of non-intel-led, non-dispatch stops. From
 22 January to July 2020, the Department made 5,446 non-intel-led, non-dispatch
 23 stops. See *id.* This year, however, from January to July 2021, the Department made
 24 only 2,217 non-intel led, non-dispatch stops. See *id.* This is significant because non-
 25 intel-led, non-dispatch stops are the types of stops where police officers typically
 26 exercise the most discretion. For dispatch stops police have been called to respond to

27
 28 ¹⁰ Intelligence-led policing means requiring officers to have some nexus to criminal activity before they effect stops of vehicles or people. *Id.* at 21:19-23

reported criminal activity, and for intel-led stops police must have knowledge of an existing nexus to criminal activity prior to making the stop.

Monthly Risk Analysis Report – Citywide Through July 31, 2021

	Jan-Jun Ave	July 2021	% Change	YTD 2020	YTD 2021	% Change
Stops						
Dispatch Stops	700.5	636	-9%	6,392	4,839	-24%
Non-Dispatch Stops	532.8	498	-7%	8,251	3,695	-55%
% Intel Led	40%	40%	0%	34%	40%	+6%
% Non-Intel Led African American	44%	44%	0%	47%	44%	-3%
% Non-Intel Led Hispanic	33%	37%	+4%	30%	33%	+3%
% Non-Intel Led Traffic Stops	83%	85%	+2%	80%	84%	+4%
Total Stops	1,233.3	1,134	-8%	14,643	8,534	-42%

Fig. 3

1. The Department is a Leader in the Bay Area and in the Nation

Other law enforcement agencies in the Bay Area look to the Department as a pioneer in evaluating and reducing racial disparities in police stops. The Department has been asked to give presentations to police agencies and city leadership in Berkeley, San Francisco, and Vallejo to share how the Department has sustained a significant decrease in stop rate disparity and how it promotes and uses intelligence-led policing and risk management data and meetings to achieve and sustain improvement.

Comparison of law enforcement agencies nationwide exhibits the Department as a leader among cities of similar size in reducing racial disparities in policing. See Fig. 4, *Arrest Disparities Haven't Reduced*, chart graphic reprinted from <https://policescorecard.org/findings#racial-disparities-persist> (last visited on August 24, 2021).¹¹ Although the chart's title reflects the nationwide trend that between

¹¹ The Police Scorecard is the first nationwide public evaluation of policing in the United States. The Scorecard calculates levels of police violence, accountability, racial bias and other policing outcomes for over 16,000 municipal and county law enforcement agencies, covering nearly 100% of the U.S. population. The Police Scorecard integrates data on police arrests, personnel, funding, incarceration rates and homicide clearance rates from official federal and state databases such as the

2013 and 2019 “Arrest disparities haven’t reduced,” the chart could be accurately retitled as “Oakland has reduced racial disparities in arrests the most while disparity increased in cities nationwide.”

Arrest disparities haven't reduced.

Change in Black-white arrest disparity from 2013-19 in jurisdictions with 400k+ population. UCR arrests data and demographics from 2013 and 2019 US Census ACS.

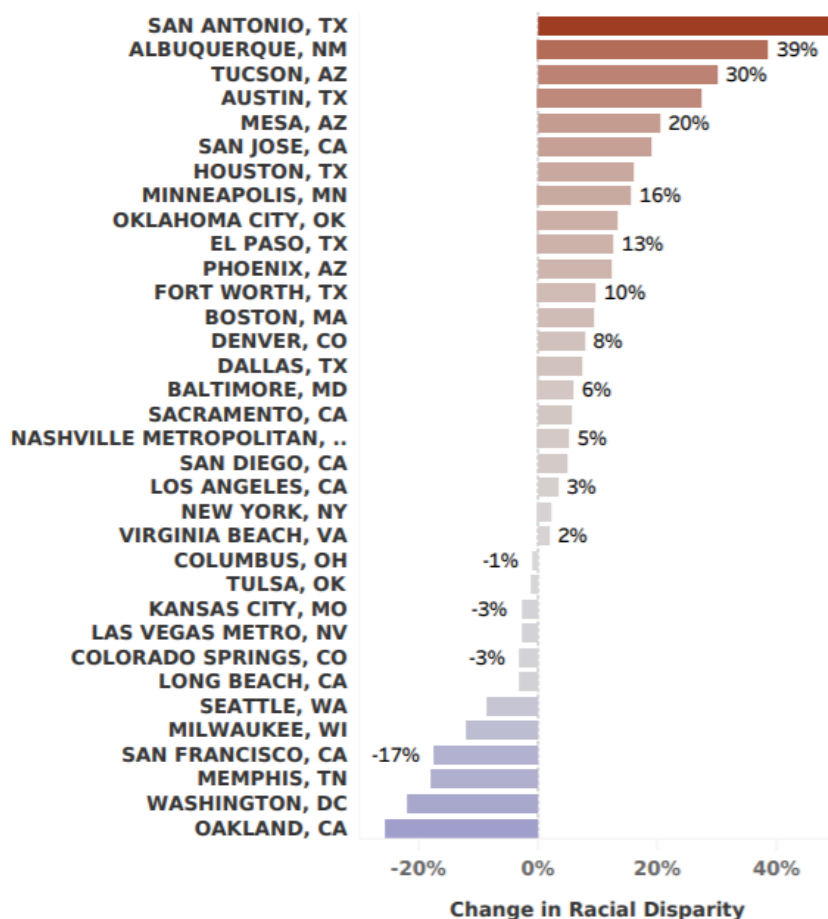


Fig. 4

From 2013 to 2019, Oakland outperformed every other city of similar size reducing overall Black-white arrest disparity by 26% and Black-white disparity in drug possession arrests by 36%. The city that did second best, Washington D.C.,

FBI Uniform Crime Report (UCR), the Bureau of Justice Statistics' Annual Survey of Jails, the U.S. Census Bureau's Survey of State and Local Government Finances and the California Department of Justice's OpenJustice database. See <https://policescorecard.org/about>.

reduced Black-white arrest disparity overall by 23% and drug possession arrest disparity by 22%. During that same seven-year span, the Department averaged the fewest officer-involved shootings per number of arrests among similarly sized cities. See Fig. 5, *Police Shooting Rates in Cities*, chart graphic reprinted from <https://policescorecard.org/findings#clear-pattern> (last visited on August 24, 2021).

Police Shootings Rates in Cities

Rate of police shootings (fatal and nonfatal) per 10k arrests among police depts with jurisdictions of over 400k population.

	2013	2014	2015	2016	2017	2018	2019
DETROIT, MI	14.9	13.4	13.8	9.2	20.6	6.6	7.5
OKLAHOMA CIT..	4.7	7.2	5.1	3.8	4.6	7.6	7.0
HOUSTON, TX	4.3	5.2	5.7	4.5	3.2	4.2	5.6
FORT WORTH, ..	2.4	3.1	4.1	4.5	3.5	4.5	5.4
TULSA, OK	9.8	4.7	10.8	14.0	3.9	3.0	4.8
LOUISVILLE ME..	0.6	1.7	1.5	0.5	1.9	2.2	4.8
SEATTLE, WA	4.6	6.8	2.8	2.7	4.1	1.3	4.7
LOS ANGELES, ..	5.0	3.4	5.9	5.1	6.0	4.7	4.1
SAN ANTONIO, ..	2.2	2.3	2.6	3.1	2.3	2.1	4.0
WASHINGTON, ..	5.9	3.8	7.2	4.6	4.5	1.5	4.0
DENVER, CO	4.0	2.0	3.3	4.0	2.0	2.7	3.8
JACKSONVILLE, ..	2.7	3.5	4.2	4.8	4.1	2.3	3.7
ALBUQUERQUE,..	4.3	3.1	4.1	2.9	4.3	4.5	3.6
MILWAUKEE, WI	3.3	2.5	4.4	2.9	2.1	2.6	3.6
DALLAS, TX	4.7	6.0	4.1	3.8	2.2	1.3	3.4
EL PASO, TX	1.5	0.5	3.3	1.8	1.2	1.2	3.1
LOS ANGELES, ..	5.0	3.8	4.2	4.0	2.6	2.6	2.9
ARLINGTON, TX	2.3	1.2	2.9	0.9	7.1	2.1	2.9
CHARLOTTE-ME..	2.6	3.0	2.0	5.1	2.1	2.3	2.8
SAN JOSE, CA	3.3	2.3	7.4	3.8	5.7	3.9	2.7
PHOENIX, AZ	4.4	3.5	3.3	5.6	4.2	8.4	2.7
MEMPHIS, TN	2.7	2.3	3.2	2.8	1.3	2.6	2.6
BALTIMORE, MD	2.5	2.4	4.3	4.4	3.4	2.3	2.4
LONG BEACH, CA	8.2	3.1	5.8	5.4	6.6	3.0	2.4
SAN FRANCISCO..	4.6	5.4	5.4	2.0	4.3	3.6	2.1
AUSTIN, TX	2.4	1.1	2.1	2.6	3.2	4.5	2.1
CHICAGO, IL	6.0	7.3	5.9	7.6	5.9	3.9	2.0
SAN DIEGO, CA	2.2	2.2	3.3	1.7	2.0	1.8	2.0
INDIANAPOLIS, ..	2.0	5.3	5.0	4.3	2.0	1.2	2.0
TUCSON, AZ	2.8	1.9	1.9	2.4	0.7	3.5	1.9
LAS VEGAS ME..	1.7	2.3	2.4	1.5	3.2	2.9	1.8
VIRGINIA BEAC..	1.6	0.9	2.0	0.0	2.1	0.6	1.8
MINNEAPOLIS, ..	0.7	1.2	2.0	0.8	1.7	2.6	1.7
SACRAMENTO, ..	1.6	2.5	1.1	1.8	3.6	1.4	1.5
NEW YORK, NY	1.1	0.9	1.1	1.3	0.9	0.8	1.3
MESA, AZ	1.2	2.1	2.3	3.5	2.1	5.3	1.2
MIAMI, FL	1.6	0.3	1.2	1.2	0.5	1.0	0.5
OMAHA, NE	3.1	2.5		3.7		2.6	0.5
OAKLAND, CA	6.6	0.0	6.5	0.0	1.0	1.1	0.0

Fig. 5

Remarkably, during roughly the same time that the Department reduced racial disparities and refrained from using firearms, from 2012 to 2017 the City also experienced a 43% reduction in homicides and a 50% reduction in non-fatal shootings. See Braga, A., et al., *Oakland Ceasefire Evaluation Final Report, May 2019*, at 101, <https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-Evaluation-Final-Report-May-2019.pdf> (last visited Aug. 24, 2021).

1 **2. The Department is in Partial Compliance with Task 34,**
 2 **Vehicle Stops, Field Investigations and Detentions (Stop**
 3 **Data)**

4 The Monitoring Team last assessed Task 34 in July 2020. *See* Dkt. 1387 at
 5 22-23, *69th Report*. The Monitoring Team found the Department in partial
 6 compliance, noting that “[a] goal of a risk management system should be to
 7 continually seek more comprehensive understanding of risk, its distribution, its
 8 impact, and its reduction.” *Id.* at 23.

9 The Department has risen above other agencies nationwide because it
 10 prioritizes critical review of its stop data and has achieved the most significant
 11 reductions in racial disparity. Racial disparity in police stops is an area without
 12 established and generally accepted standards. As a result, the Department is
 13 constantly resetting its own goalposts beyond the gains it achieves and seeks
 14 inventive ways to better understand the data and reduce disparities. The
 15 Department will never cease its work to reduce racial disparity in policing. It will
 16 continue that work while simultaneously working to improve the quality of each
 17 interaction once a stop has occurred. In this way, the Department’s work to improve
 18 in these areas will never be “finished.” But it is important to differentiate the
 19 “finish line” for purposes of NSA Task 34 from the Department’s own ever-moving
 20 goalposts as it continues to advance leading agencies nationwide in reducing racial
 21 disparity in police stops.

22 **II. POLICY DEVELOPMENT AND PUBLICATION UPDATE**

23 The City provides the chart below to update the Court on the current status
 24 of the remaining policy items discussed with the Court at the prior status
 25 conference and in the City’s April and May 2021 reports. *See* Dkts. 1433 & 1447.

26 ///

TITLE	STATUS
Internal Affairs Policy & Procedure Manual, Policy 21-01	Published and effective August 17, 2021.
CID Level 1 Investigations Policy & Procedure, Policy 19-01	Remains in development. Received multiple rounds of feedback from Monitoring Team and plaintiffs' counsel. Next step is to incorporate latest feedback and sending back to Monitoring Team for further review.
Chief's Directive Memorandum Re Administrative Leave	Remains in development. Received multiple rounds of feedback from Monitoring Team. Next step is publication.
DGO R-01, Risk Mitigation	Remains in development. Received initial feedback on the Department's draft from the Monitoring Team and plaintiffs' counsel. Engaged in incorporating feedback.
DGO D-17, Personnel Assessment System (PAS)	The Department has reviewed existing policy. D-17 still accurately reflects current PAS data use and processes. In light of the anticipated robust content of the risk mitigation policy the Department is developing (DGO R-01), the Department's Policy & Publication Unit does not recommend revising D-17, but rather referencing it as appropriate in DGO R-01. In addition, the Bureau of Risk Management plans to add a memorandum to complement D-17 to support supervisors' ability to immediately address performance-related problems without the need for preliminary review by the PAS panel.
Special Order 9208 re Type 32 Force Reporting	Remains in development. Continuing to meet with Monitoring Team to try to achieve consensus on single remaining issue.

III. FORCE INVESTIGATIONS AND REPORT RESPONSIBILITY—TASK 25

The Monitoring Team's current assessment is that the Department is in partial compliance with Task 25, Force Investigations and Report Responsibility. Dkt. 1465 at 15, *74th Report*.

The Monitoring Team "continued to see improvements" in Level 3 and Level 4 use of force reports. *Id.* at 15. Despite the executive team's communication of its expectations for members who prepare and review use of force reports, through

1 policy revisions, training, and follow-up emails, there remain use of force reports for
 2 which supervisors fail to identify and address subordinates' deficiencies and fail to
 3 complete appropriate documentation. *Id.* Members reviewing the supervisor reports
 4 have also failed to identify and address these concerns on a number of occasions. *Id.*
 5 at 14. The more significant oversights include failures to identify deficiencies in
 6 officer reporting and failing to identify or address Manual of Rules (MOR)
 7 violations, including body-worn camera violations. *See id.* Other reporting issues
 8 include members using "training and experience" to justify a use of force without
 9 articulating what specific knowledge, training, or experience supports their actions.
 10 The Department is working to address this issue and the Monitoring Team has
 11 "begun to see instances where officers are more descriptive." *Id.*

12 Significantly, of the 186 lower-level use of force reports most recently
 13 reviewed by the Monitoring Team, it identified only one incident where force may
 14 not have been appropriate. *Id.* (based on inspection of 186 Level 3 and Level 4 use of
 15 force reports prepared from March-October 2020).¹² The Monitoring Team noted,
 16 however, that to the Department's credit, it had already initiated an internal
 17 investigation of that use of force. *See id.* In addition, the Monitoring Team did not
 18 identify any instances where the use of force was not de-escalated or stopped when
 19 resistance decreased. *Id.* The Monitoring Team remarked on the continued efforts of
 20 members to attempt to de-escalate situations prior to using force. *Id.* The
 21 Monitoring Team reported "significant improvement" compared to its early
 22 assessment of the Department's use of verbal commands prior to using force. *Id.* at
 23 5. There has also been a reduction in the number of incidents where officers did not
 24 identify themselves as police officers when it was appropriate to do so. *See id.* at 14
 25 ("the number of these incidents has decreased since our earlier reviews").

26 ¹² Notably, in the 186 Level 3 and Level 4 use of force reports the Monitoring Team
 27 reviewed from March-October 2020, the percentage of force incidents involving
 28 African Americans decreased by 4%, and force incidents involving Latinos decreased
 by 2%. *Id.* at 4.

1 A. Improvement in Body-Worn Camera Activations

2 Body-worn camera activations appear to be improving, though progress has
3 somewhat slowed. As an initial matter, body-worn camera violations are now rarely
4 failures to activate but typically activations delayed by seconds or minutes. The
5 most recent Monitor Report calculated a 17% delayed activation rate in the 186 use
6 of force incidents it reviewed from March-October 2020. *74th Report* at 7. That is a
7 decrease from the 21% delayed activation rate reported in the Monitor's previous
8 assessment. *See id.* An additional issue, however, is that approximately half of the
9 delayed activations were not caught by supervisors or second level reviewers. *Id.*

10 The Department has continued to conduct follow up on each body-worn
11 camera activation concern raised by the Monitoring Team. *Id.* The Department is
12 not only holding officers accountable, it is also "holding supervisors to account when
13 they fail to identify and address these types of concerns." *Id.*

14 In addition to continuing to train, remind, and discipline¹³ members to
15 encourage timely body-worn camera activations, the Department also anticipates
16 assistance from new technology will enhance its progress. The Department is
17 employing VirTra virtual de-escalation training which includes prompts to officers
18 to timely activate body-worn cameras and to announce themselves as police officers.
19 Repetitive training forcing an officer to take each of these steps in every encounter
20 should at some point make these steps automatic for every officer, making it less
21 likely that officers may forget or neglect to take these actions in the field. The City
22 has also approved funding for the Department to purchase a body-worn camera
23 system upgrade. Features of the new system will enhance body-camera activation
24 and video review. Events such as unholstering a firearm or taser, activating a police
25 vehicle's emergency siren, releasing a shotgun from its vehicle rack, or opening a
26 police vehicle door¹⁴ will trigger automatic body-worn camera activation. In

27 ¹³ The Department imposes progressive discipline for members who exhibit a
pattern of misconduct, including patterns of late or non-activations.

28 ¹⁴ This feature is programmable for select vehicle doors. Automatic activation in

1 addition, body-worn camera activation may also be triggered remotely allowing for
2 supervisors or command staff who may not be on scene to activate body-worn
3 cameras. The system will also allow reviewers to play multiple videos from different
4 officers' body-worn cameras on a single screen, synchronized. This will make video
5 review faster and more efficient, allowing reviewers to view use of force incidents
6 from multiple angles simultaneously.

7 While the Department appreciates the Monitoring Team's recognition of the
8 progress it has made, and the Monitor's assessment that the Department's steps to
9 address proper force reporting "have been fruitful," *id.* at 8, the Department
10 remains focused on improving body-worn camera activation, officer announcements
11 when appropriate, and, most significantly, consistent quality use of force report
12 review at every level of the organization.

13 IV. INTERNAL AFFAIRS TIMELINES—TASK 2

14 The Monitoring Team last evaluated the Task 2 timelines in June 2021 and
15 found that the Department remains out of compliance. Dkt. 1455 at 3, *73rd Report*.
16 The Department must complete 85% of Class I and 85% of Class II investigations
17 within 180 days to be in compliance with this task. In addition, in cases with a
18 sustained finding, the discipline recommendation process must be completed within
19 30 calendar days of the sustained finding. *See* DGO M-03, Complaints Against
20 Departmental Personnel or Procedures.

21 The Department was previously in compliance with the timelines but fell
22 below the 85% completion rate in 2018. The Department saw improvement through
23 early 2020, completing 69% of Class I cases and 84% of Class II cases within the
24 180-day timeline. Dkt. 1387 at 3, *69th Report*. More recent Monitor Reports,
25 however, reflect some decline in progress, particularly for Class I cases. For the
26 second quarter of 2020, the Monitor reported timely completion rates of 67% for

27
28 most cases will likely not be tied to the driver's door which may open and close
innumerable times during an officer's shift.

1 Class I cases and 75% for Class II cases. Dkt. 1416 at 3, *71st Report*. And for the
2 first quarter of 2021, the Monitor reported timely completion rates of 54% of Class I
3 cases and 82% of Class II cases. Dkt. 1455 at 3, *73rd Report*. On a positive note, for
4 sustained cases the Department has routinely completed all discipline
5 recommendations within 30 days. *See 71st Report* at 4; *73rd Report* at 3.

6 The Department continues to work toward compliance with the case
7 completion timelines. The Department's progress was slowed by the volume of
8 complaints stemming from the Summer 2020 protests following the murder of
9 George Floyd in Minneapolis. The four-day period from May 29-June 1, 2020
10 required the Department to respond to 134 complainants and open 59 internal
11 investigation cases. For comparison, for the entire month of April 2020, the
12 Department opened an estimated 115 internal investigation cases, including service
13 complaints, and on average in the four months preceding the protest period, the
14 Department opened approximately 123 cases each month.

15 The volume of complainants and case investigations that came in over a four-
16 day period was unprecedented. The Department lacked the experience with an
17 event of this scale that would allow it to predict with adequate accuracy the amount
18 of staff time necessary to interview this volume of complainants and complete the
19 investigations. This led to a decline in timely Task 2 completion rates in the last
20 year.

21 On a positive note, the Department gained important knowledge that will
22 allow it to more accurately assess its resource and staffing needs in the future in
23 response to a sudden influx of complaints and cases of this volume. In addition, for
24 Division Level Investigations (DLIs), investigating sergeants are no longer told
25 what the 180-date is but instead receive deadlines determined by IAD that build in
26 extra time for case investigation review. The Department therefore not only
27 anticipates that following this temporary dip it will achieve compliance in the near
28 term, but that if faced with an event of similar magnitude in the future it is now

1 much better prepared to complete investigations within the 180-day timeline.

2 Based on IAD's current review of the data from the second quarter of 2021,
 3 IAD projects that 76% of Class I investigations and 81% of Class II investigations
 4 meet the 180 date. Excluding misconduct allegations associated with crowd events
 5 and protests, however, the Department's timeliness rises to 90% for Class I cases
 6 and 85% for Class II cases. Thus, absent the unanticipated voluminous influx of
 7 investigations stemming from protests and crowd events this past year, the
 8 Department would be in compliance with the Task 2 timelines.

9 **V. SPECIAL FORCE REVIEW BOARDS RELATED TO SUMMER**
 10 **2020 PROTESTS—TASK 26**

11 The Department has completed all investigations and Force Review Boards
 12 (Boards) arising from the Summer 2020 protests.¹⁵ Over the four-day period from
 13 May 29-June 1, 2020, Oakland experienced widespread protests and, in some
 14 instances, civil unrest, including acts of violence and destruction of property. *See*
 15 *74th Report* at 19. Many tactics were used to address both the peaceful protests and
 16 acts of civil unrest, among them the use of chemical munitions. *Id.* Chemical
 17 munitions are classified as Level 3 uses of force and therefore not normally subject
 18 to Boards, which are convened for Level 2 uses of force. The Department, however,
 19 chose to hold special Boards to review each of the 263 deployments.¹⁶

20 The Monitoring Team appreciated that the "review of these events was a
 21 massive undertaking." *Id.* at 20. In addition, the Monitoring Team "commended . . .
 22 this initiative," recognizing that the unique design of these Boards "demonstrate the
 23 level of importance the Department placed on its commitment to provide a thorough
 24 review of these events." *Id.* at 19. Each Board was chaired by a Deputy Chief. And

25 ¹⁵ The discipline recommendation for the final remaining case is scheduled for
 26 presentation to the Chief and the Community Review Police Agency (CPRA) on
 September 3, 2021.

27 ¹⁶ In instances where a supervisor specifically authorized a deployment, that is also
 28 considered a use of force and is evaluated for justification. Therefore, a single
 deployment could be assessed twice. *Id.* at 21.

1 each Board reviewed a day's worth of activity involving multiple disparate incidents
2 occurring over several hours and in varying locations. *See id.* While the Boards did
3 not formally review other lower level uses of force associated with these incidents,
4 when appropriate the Boards identified and further examined certain instances
5 where force may have been used to ensure that all force was properly reported and
6 investigated. *See id.* at 20.

7 Collectively, the Boards assessed 263 chemical munitions deployments. *Id.* at
8 21. The Monitoring Team disagreed with one in-compliance finding for one of the
9 chemical deployments. *See id.* at 20. In that instance, individuals threw bottles at a
10 police vehicle traveling to another scene to assist other officers at a skirmish line.
11 *Id.* The officers stopped the vehicle and an officer got out and threw a handheld
12 chemical device at the individuals to dissuade them from continuing to throw
13 bottles at the vehicle. *Id.* Other than this instance, the Monitoring Team concurred
14 with all of the findings of all of the Boards, including the 33 deployments the Boards
15 found out of compliance with policy. *See id.* at 20 & 21 (noting that 32 of the not-in-
16 compliance findings stemmed from the Board which reviewed the activities of June
17 1, 2020).

18 The Monitoring Team acknowledged that overall, the Boards were "well-run."
19 *Id.* at 20. In addition, the Monitoring Team found that each of the reports
20 documenting the Boards' activities was complete and well-written. *Id.* at 21. As a
21 result of its review of 16 Board reports completed from December 2020-May 2021,
22 including the special protest Board reports, the Monitoring Team assessed the
23 Department remains in full compliance with Task 26, Force Review Boards. *Id.* at
24 17 & 21.

25 CONCLUSION

26 Both the pandemic and surge in violent crime continue to challenge Oakland
27 residents, Department sworn and non-sworn members, and City staff.
28 Nevertheless, the Department's commitment to Constitutional policing shines

1 through in its response to every challenge. The City looks forward to further
2 discussing the foregoing issues at the upcoming Case Management Conference.

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THE OPOA'S STATEMENT

As the parties move increasingly closer to achieving full compliance with the Negotiated Settlement Agreement ("NSA"), Intervenor Oakland Police Officers Association ("OPOA") continues to actively engage in collaborative efforts with the Oakland Police Department ("OPD").

At the last Case Management Conference on February 22nd, the Court made unambiguous urgings that the OPOA affirmatively assist in efforts to pursue continued cultural change within the Department. While the OPOA has never deviated from the mission of full compliance, it has enhanced efforts to reach out to the Police Department administration to create a more formal structure to pursue collaboration. In that regard, Barry Donelan the President of the OPOA, was mindful of the Court's admonitions on February 22nd and reached out to Chief Armstrong on March 1st and communicated with Chief Armstrong via email and stated among other things:

The OPOA has taken Judge Orrick's comments seriously and in response, have some specific concepts that we would like to discuss with you. Together we can address the steps to ensure implementation of the five key tasks laid out by Judge Orrick. Among other things, we believe that the OPOA can collaborate with the Department in crafting a social media policy for the Department and expand on the OPOA's current social media lesson plan to the entire Department. (OPOA "Exhibit A")

Chief Armstrong agreed to meet with members of the OPOA Executive Board on March 24th. In advance of the meeting, the OPOA prepared an agenda exclusively addressing the NSA. Specifically, the agenda (attached hereto as OPOA "Exhibit B") as forwarded to Chief Armstrong focused on NSA compliance by seeking to "Outline steps to address and improve cultural competencies among the membership and address racism and sexism within the ranks." It also states that the OPOA was interested in having serious discussions on collaborating with the Department to craft and implement Department wide social media policies and related training. Finally, the OPOA specifically wanted to discuss a "blueprint" for

1 NSA compliance and how the OPOA can assist in the effort.

2 The meeting with Chief Armstrong was open, candid and productive. The
3 representatives of the OPOA engaged in an honest and direct exchange with Chief
4 Armstrong and expressed the OPOA's intense desire to enhance and accelerate
5 efforts to address the continued need to achieve cultural change in the Department.

6 Since the March 24th meeting the OPOA has actively engaged the
7 Department in its ongoing efforts to seek cultural change and compliance with the
8 NSA. There have been ongoing conversations between the command staff and
9 representatives of the OPOA to enact measures to resolve any lingering doubt as to
10 the intentions of the OPOA to reach out to rank-and-file members and communicate
11 the urgency of effectuating continued cultural change.

12 The OPOA remains committed to further the interests of the City by
13 continued collaboration with all parties.

14 ///

Respectfully submitted,

Dated: August 25, 2021

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*Per Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of the document has been obtained from each of the other Signatories